THE CIVIL RIGHT OF TYTHES:

WHEREIN,

Setting *aside the Higher Plea of* Jus Divinum *from the Equity of the Leviticall Law, or that of Nature for Sacred Services, And the Certain apportioning of Enough by the Undoubted Canon of the New Testament,*

The Labourers of the Lords Vineyard of the Church of *England* are estated in their *Quota pars* of the TENTH or TYTHE *per Legem terræ*, By Civil Sanction or *THE LAW* of the *LAND*:

Which being the foundation of All Civill Right Here, must needs render their Spoliation Wrong, the Taking or withholding as Injurious as of Any other MANS DUE.

Humbly represented to the Judicious and Pious Consideration of all Sober and advised Christians, who *fearing God* and *hating Covetousness*, have learned Christ so far, as, *To give every one His Own*; and *would do no Wrong* for Conscience sake.

By C. E. *Mr of Arts.*

Quicquid enim jure possidetur, injuriâ auferetur. Quintil.
Decimæ autem EX DEBITO requiruntur; & qui eas dare noluerit RES ALIENAS invasit. Augustin. Serm. 219: de Tempore.
Render Therefore to All THEIR DUES. Rom. 13.7.

Licensed and Allowed.

LONDON,
Printed by *Tho. Newcomb*, for JOHN HOLDEN, at the Anchor in the New-Exchange. 1650.

REVERENDISSIMO· DOCTISSIMOQUE
JACOBO· USSERIO
ARCHI-PRÆSULI· ARMACHANO
PIETATE
ERUDITIONE
CÆTERISQUE· ANIMI· VIRTUTIBUS
MAXIME· CONSPICUO
DIATRIBAS· HASCE· SUAS· DE· DECIMA-
RUM· APUD· ANGLOS· JURE· NATIO-
NALI ET· POLITICO
SUMMA· OBSERVANTIA
D. D.

HARVARD COLLEGE LIBRARY
FROM THE LIBRARY
OF F. L. GAY
JUNE 1, 191

C. E.

40-2
8

The Contents.

AN Introduction declaring the occasion, scope, and limits of the Whole, with way Made to Sundry Propositions of CIVILL RIGHT in generall. pa. 1.

Chap. 1. Propos. 1.

That by the Law of Nature all was left at first in Community; *And this according to the Canon, Civill, and Our Common Laws, not opposing the Law of God.* p. 9.

Chap. 2. Propos. 2.

That yet Inclosures may be, *the Scripture approving and furthering.* p. 27

Chap. 3. Propos. 3.

That the Fence making out those Inclosures is Everywhere, *THE LAW.* p. 31

Chap. 4. Prop. 4.

Which being manifold, That in the world The Maker of Severals is, The Law of Nature, *or Nations.* p. 37

Chap. 5. Prop. 5.

In any Particular place, The Law of *That* Nation. p. 39

Chap. 6. Prop. 6.

Individually with Us, OUR LAW. p. 41

Chap. 7.

Here with us Three distinct titles made out for Tythes: 1. Of Donation, *strengthned by Confirmation.* 2. Possession, *advantaged by Being Possessed for God.* 3. Præscription, *lengthned for through the space of many Præscription-Times; With what Donation (the first of them) is.* p. 56

Chap. 8.

The Donation in Kent of K. Ethelbert and his people, *and that it is genuine.* p. 62

Chap. 9.

The Donation of K. Aelfwald *in* Northumberland, *and of* K. Offa *in* Mercen-land. p. 68

Chap. 10.
The Donation of K. Æthelwlph *of* All *who was over* All. p. 70

Chap. 11.
Henceforth needed but Confirmation, *and Memorials speak accordingly, of* not Giving *but* Paying: *what That is, and* Tradition *superseded as of a Right.* p. 80

Chap. 12.
The particular confirmations of K. Alfred, K. Aethelstane, *and* K. Edmond. p. 82

Chap. 13.
Of K. Edgar *with sundry Ecclesiasticall Constitutions.* p. 84

Chap. 14.
Of the Parliaments of Ænham *and* Habam. p. 85

Chap. 15.
Of the Danish Knoght *in* K. Edgars *Law repeated.* p. 87

Chap. 16.
Lastly, of Edward the Confessour *in his composition of the* Common Law. *That work done by Him: Whence he had his Materials, with Recapitulation and Inforcement of all thus far to the Conquest.* p. 89

Chap. 17.
Behither, a partition of the strengths into four sorts: 1. *The allowance of* K. Edwards Laws. 2. Church-Constitutions. 3. *Impressions of the* Secular State. 4. Particular mens Votes.
I. *As to the first, what* William 1. Will. 2. Hen. 1. Stephen of Bloys, *and* K. John *passed to make over these Laws into the Charters; and that They were* K. Edwards. p. 99

Chap. 18.
II. *In Entrance to the Church remembred,* 1. *That Tythes were under* the Conquerour. 2. *Confirmed by* Hen. the 1. 3. *Owned* in a Parliament at Westminster *in* 3. *of the same.*
Being come in, The Patent of the Court-Christian *represented, with taking Tythes into that Jurisdiction likely by vertue thereof.* p. 110

Chap.

Chap. 19.

Laws or Canons made by the Church. *One* under Will. 1. *Another* under Wil. 2. *Another* at Windſore. *Another* at London. *Two* at Weſtminſter. *Three* Decretalls *ſent hither, and to whom. What force They had here, and vertually the like of Then have yet. More* from R. Hoveden, *with* Parochial Right *ſettled by Authority from the Laterane Councel. Two* other Decretals *ſent in* K. Johns *time, alſo of force: But the chief ſtrength is* in the Provincials *collected by* W. Lindwood, *in Quoniam propter: Quoniam audivimus: Sancta Eccleſia: Quia quidam; &c.* p. 120

Chap. 20.

The Canon *of* Sylva Cœdua. *Strength of Church-Power to create Right where not reſtrained, inſinuated by the Statute of* 45 Edw. 3. 3. *againſt the Exceſs of that Power.* The Proceedings *in the Court-Chriſtian to Recover theſe Rights. What was intended by the Stat. of* 25 Hen. 8. 19. *about* Reforming the Canons. *What was done: The Canons to this purpoſe Given. Till theſe be authoriſed, All Former in force, as by the Proviſo of that Statute.* p. 137

Chap. 21.

Among Seculars, the firm Rooting Tythes have in III.
the Great Charter. *The ſolemn Ratification and due Great eſteem thereof: with addreſs by Apoſtrophe to thoſe are againſt them, that they keep but faſt here, and* This will ſettle Tythes. *Their Redargution elſe from their own Principles, and a* Chriſtian admonition to Conſtant, Equall and Juſt dealing. p. 148

Chap. 22.

The Statutes of Regia Prohibitio *under* Hen. 3. *Of* Circumſpectè agatis, *and Conſultations under* Edw. 1. Articuli Cleri *under* Edw. 2. *Four more under* Edw. 3. *Divers under* R. 2. *and* Hen. 4. *All but the Exempted now paid, and Who were Exempted.* p. 162

Chap. 23.

Under Hen. 8. *Wary and juſt proceedings as to this matter. The preſervation of Tythes, when what next was Caſt away. The Need of Temporals for Divine Service. Two* Sta-

Statutes by Conſequent *eſtabliſhing them*, ſc. 24 Hen. 8. chap. 12. & 25 Hen. 8. chap. 19. *and Two more purpoſely*, ſc. 27 Hen. 8. chap. 20. & 32 Hen. 8. chap. 7. p. 177

Chap. 24.

The laſt and moſt vigorous *under* Edw. 6. p. 192

Chap. 25.

An Examination of the Lo. Cooks *aſſertion occaſioned by his Comments thereon, That* Tythes were taken into Church-Cognizance by ſome old Statutes, as about *Edw.* 1. time. *And that Not, from nine* alledged probabilities. p. 198

Chap. 26.

By occaſion of the mention of them in that Statute, The More ancient dueneſs of Perſonal Tythes laid forth: *With the Laws in force for them before the Statute.* p. 205

Chap. 27.

The grant of the Petition of Right a Conceſſion of All. That None are Burdenſome, becauſe laid on by Law. Application to thoſe that Plead this Petition, that if they underſtand it It Cannot be Againſt but Muſt be For them, becauſe they were at the time of that grant A Right. p. 211

Chap. 28.

IV. *What particular and Ruling as well as Judging Lawyers have ſaid. The Lo.* Cook: *M. Saint* German, Fleta, Bracton, *&c. And an inſinuation of their allowance from the proceedings* in Temporal Courts *inferred from the* form of Prohibitions *in the Book of* Entries, Natura Brevium, *&c.* p. 219

Chap. 29.

Collection and Re-inforcement of all Hither. p. 227

Chap. 30.

Of Poſſeſſion (*the ſecond ground of Right:*) *The great force it has abroad, as that* 1. *It gives Right.* 2. *Was the firſt Right.* 3. *Is a very Right.* 4. *Againſt All but One preſently.* 5. *Againſt him at laſt.* 6. *Againſt an equall Right at any time.* 7. *Againſt All till eviction.* 8. *Helps* to Keep *what it could* not Get. *The Application of this force Hither, with anſwer to Doubt, How the Churches* Perſon *or* Man *Poſſeſſes what the Owner has:* ſc. *As a Right:* .*Which*

Which may be Inviſible, *though the things be* Corporal. pa. 230

Chap. 31.

This Strengthened by being poſſeſſed for God. *What would follow thereon. That ſuch a Thing* May be *from Scripture. What Laws ſay It is ſo* Among Us. *Their Ordination to Heaven. Hence they Could be ſtyled* CHRISTS-SHARE, *were tryed in the Court of Religion, And Their Surreption Can be Sacriledge. The Application hereof, and Inference of Neceſſary Wariness,* leſt (*if it Be not*) it Should be Thus. p. 248

Chap. 32.

Præſcription, (*the third ground:*) *What it is: The Power of it, Chiefly here in* England. *Its ſeverall Meaſures of Limitation, by the Civill, Feodall, Canon, Common, and our Statute Laws. Its Equity, Neceſſity, and Conditions. The Application Hither, With Time made good for Many Præſcription-ſpaces chiefly from M.* Selden. p. 263

Chap. 33.

A Recollection and inforcement of All. Appeal to the Lawyers, That they have So *underſtood (theſe things,) and Judged. Particularly to Sir* Henry Spelman *and M.* Selden. p. 283

Chap. 34.

Alſo to Practiſe and what hath been Seen Done. *Way made Thus to enforce Payment (*not Giving *but* Juſt Payment*) With us in the very words of Scripture. Even* Our Law Sacred: *Every Miniſter thereof* a Prieſt. *This Supposed,* That Mediately, but Certainly Tythes are Then with us Due in this new way Jure Divino: *For God is at the top of all Juſt Humane Ordinances. This ſtrengthens the other: At leaſt we have a Dueneſs by Civill Right,* Id quod erat demonſtrandum. p. 298

Chap. 35.

Exhortation then to the diſcharge of Morall Duty *in* Juſt Payment; *by Arguments chiefly from Scripture: As, from* Moſes *Precepts in the Old Law, Chriſts in the New; Our Righteouſneſs muſt exceed the Phariſees, (yet They went*

Thus farre,) Do as we would be Done unto, the Fear of God, Examples of Just and Unjust men, Do Justice, Love Mercy, Hate Cruelty, Give every one his own, *&c. which are the* Great good Works *of the Christians Law. Close to All and Some, to let every One have That: The Magistrate declined all along, Here onely saluted; The Whole meant to Private Persons; With the Conclusion.* 307

And a Prayer. 335

And a Post-Script. 337

These the CONTENS:

The CHAPTERS follow.

THE

THE INTRODUCTION.

Deo, Eccleſiæ, Patriæ, Tibi.

JUſtice and Righteouſneſs are among the great things of the Chriſtians Law. They miſtake Religion, who underſtand it to direct only in heavenly things; one part wherof is to make Honeſt Men, and while the Decalogue is within the compaſs of our Creed, and we believe both Tables of Gods law to contain our Morall duty, the ſcope of one muſt be (rightly underſtood) ever to guide our outward, morall, civil converſation. It is an age now much treating of Religion, and hard to ſuppoſe that any of thoſe who are moſt forward would (willingly and knowingly) leave out one half; leading men to God with neglect of Men, and trampling down all Civil righteouſneſs, in order to Heavenly: This makes it the more

needfully considerable what that Righteousnes is, that we may not seem to love God with neglect of our Neighbour, or in zeal of Religion to permit our selves unjust: but so to make our pilgrimage through this world, that we leave the reputation of Honest men behinde us, and so to pass through things temporall, that finally we lose not the things eternall. Particularly, in that great and so much vexed case and controversie of the remainder of the Churches Patrimony in *TYTHES*: which many look upon as of no more Right or Wrong, to continue or withdraw the payment of, then in relieving a Beggar with an Alms at the door: They may, or may not (what any advantages shall give opportunity to) with equal liberty, and no wrong to a just Conscience, parting or not parting with as they can contrive or shift, and so take to themselves that boundless license the Apostle has given in another case; let a Man (in this) do what he will, he sinneth not: As if to venture upon the spoyls of the Church, were no more then to divide what men have taken in hunting; to defraud Religion, not so bad as to disturb Humane Right, (and yet that is bad enough, and yet this is worse) And to remove the pillar (worldly) of Gods service, of no greater guilt, or doubt, or fear then to seiz upon that a man finds in his way, or to fetch Timber for building a new house, or repairing his old, from his own *Lebanon*. A great mistake! whereof the Enemy of all goodnes makes much advantage; being like to reduce the Lords Ministers hereby to great streights, and to get the daily allowance of oyle withdrawn: which, though ordinary in it self, was wont to be consecrate to keep light in the Temple: by subtracting *Levi's* portion, I mean, to disable *Levi* himself from attending the service of his God; As (1) how can worldly men live in this world and follow worldly businesse, (as to the outward part to be studyed and acted by Man, even Gods service is) without worldly maintenance?

1 Cor. 7. 36.

(1) Ἀνὲυ γὰρ τῶν ἀναγκαίων ἀδύνατον ἢ εἶναι ἢ εὖ ζῆν. Arist. polit. lib. 1. cap. 3.

Such considerations as these awaked my thoughts to that I took to be a very needful enquiry, *scil.* Whether Tythes had indeed any of that we call Right or good title among Men demonstrable, to hinder the subtraction by any that are

consci-

conscientious? A Right in equity for maintenance of Gods service? Sure, this is very likely. A right in Justice by Divine law, which apportioneth (in the New-Testament) to (2) every labourer his reward, (3) to him that preacheth the Gospel, to live of the Gospel; and this no less probable. Nay, for the very Tenth in kinde and proportion, a worldly, civil, positive, humane Right; Such as might inferr the detaining, Wrong, and make it civilly injurious not to part with what is not now courteously given, but justly paid; I resolved, it might be so: I assured my self it was so: And thought I had read and observed so much, that reduced to heads, and presented to view, might perswade others also: and because it was a truth I thought not known to all, and I perceived very many very much to love the truth; for their sakes therefore I set my self to represent what I could in haste lay together, to every ones friendly (4) consideration. No other the candor of mine own bosome did assure me I should either doubt to finde, or (5) need to fear: for the Publick had passed nothing against, but many things (6) for these dues, (which secured me on that part) besides the old established laws of the land; and for mine own private, the scales hung almost even: Not much to me whether they stood or fell, went up or down, as having not much to get or lose, to hope or fear. But for *Sions* sake I resolved I would not, I might not hold my peace: For Gods sake (I know mine own bosom) I was willing to be at the cost of following pains, for the Gospel of Jesus Christ's sake, and endevour to preserve (if God should

(2) *Mat.* 10.10. *Luke* 10. 7. 1 *Tim.* 5. 8.

(3) 1 *Cor.* 9. 11.

(4) And shall be heartily glad, if it shall please that God who out of the mouths of Babes and Sucklings doth sometimes perfect his praise, to magnifie his own power so much the more, as to make Me the successfull, though weak means of undeceiving any; for. *Non quaerimus vestras opes, sed vestram justitiam*, as St. *Augustin* somwhere said: It was not so much preservation of any ones Right, as all mens innocency, that set me on work. Or as *Pet. Cluniacensis* spake, *Nec tam ad scribendum coegerunt lucra decimarum, quam damna animarum*; not hope of worldly gain, but fear of loss of Souls. And this twofold; both of theirs who shall doe the wrong in with-holding, and theirs who shal miscarry for want of instruction, occasioned by with-holding of this worldly sustentation from him should have held out the light. Other means may be talked of, But——

(5) Ἡ μὲν ἀρετὴ ἐν ἀσφαλείᾳ καθίστησιν, ἡ δὲ κακία ἐν κινδύνοις. ——— ἐδέρα δέδοικεν ὁ μηδὲν ἑαυτῷ συνειδὼς πονηρὸν, ἐδενὶ πάλιν θαῤῥεῖ ὁ ἐν κακίᾳ ζῶν. *Chrysost. Hom* 14. *in cap* 4. *ad Phil. tom.* 5. *in N. Test. p* 132.

(6) As in the Ordinance of *Novem.* 4. 1644. yet in force (beside many other) for recovery of them: The repelling of the Kentish, and many other Petitions against them: The actuall segregation of them from other parts of Delinquents Estates, to piece out a more comfortable Subsistence for Preachers out of them: And, above all, the late exemption of them from sale among other Cathedrall Endowments, with expresse Declaration, that they shall make every Parish, where they arise, affoord 100 *per an.* to an able Guide of Souls. *Vid Act of Jan.* 8 1649. and what can, if this do not, assure their purpose? at least a Declaration of such Intentions, which is that we are to walk by.

ſo bleſs weak endevours) that ſupport had been hitherto the viſible and worldly maintenance of Chriſt's Kingdom in ours, I reſolved to dig down as deep as I could, to try and repreſent to view what foundation and ſtrength that pillar had, which chiefly (as worldly ſtill) hath held it out to the view of the world amongſt us; being glad to finde:

1. That it is of that firmneſſe and alſo age, that we have occaſion to bleſſe God for his (1) early mercy to this Land: That almoſt as ſoon as any where; he that once ſaid, (2) *Foxes have holes, and the birds of the aire neſts, but the Son of man not where to lay his head*; had here (in his Miniſters, which (3) whoſoever receiveth, receiveth him) entertaiment and home.

(1) *Rem autem barbaris (circa an. ab Incarnatione Domini 63) cum gente tam nova audiens & inconſueta, omnino prædicationi eorum conſentire renuebat, nec paternas Traditiones commutare volebat. Quia tamen de longè venerant, vitaque eorum exigebat modeſtia, ad petitionem eorum quandam inſulam ſylvis, rubo, atque paludibus circundatam ab Incolis* Ynſuvitrim *nuncupatam* (Glaſtenbury) *in Latebras ſuæ Regionis ad habitandum conceſſit. Poſtea & alii duce Rege, licèt Pagani, comperta eorum vitæ ſanctimonia* (Ioſeph of Arimathea, and his 12. Fellow Apoſtles) *unicuique eorum unam portionem terræ ſucceſſivè conceſſerunt, ut ad petitionem eorum ſecundum morem Gentilium dicta 12. Hidas eiſdem confirmarunt; unde 12. Hidæ per eos adhuc, ut creditur, nomen ſortiuntur.* Guilielm. Malmeſ. apud Spelm. Concil. pag 5 de Exordio Chriſtianæ Religionis in Britannia.

(2) Matth. 8.20. Luc. 9.58.

(3) Matth. 10.40. Iohn 13.20.

2. That prudence mixed with piety, and true love of God of equall ſincerity, and all dimenſions with that to their neareſt ſelves, prompted our long ſince dead and bleſſed Anceſtors, to doe for him as for themſelves, building the honour of his houſe with the ſame (if not better) materials then their own; and contriving to perpetuate (as they meant) true Chriſtian Worſhip, by allowing it the beſt (they thought ſo) of this world, no weaker nor other ſupport then went to the ſtrongeſt of their own buildings.

3. That it hath not been yet within the power of malice, envie, pride, tyranny, fraud, wretched covetouſneſſe, or any other inimicall paſſions or powers, to ſcatter or divert, diſturb or deſtroy: but by the bleſſing of God, and under the ſafety, power, and protection of the Laws, *Levi* hath had his own, and yet has his own, to live on and ſerve his God, as well as other men. The foundation of Gods Houſe (his Church) ſtands faſt and firm upon the ſame bottom with theirs (beſides what it has from Heaven,) and beſide what

may

may be ſaid for a Divine Right; the Miniſters of Jeſus Chriſt have as much of humane as any other men can plead for, that is truly and juſtly theirs: And this to continue, and this for their works ſake, and thus the Goſpel made here without (4) charge, which (5) St. *Paul* ſometimes deſired ſo ſolicitouſly: It being left to our Autumn of the world, only to reap the harveſt of their rich piety, who lived and made very coſtly ſeed-times before us, and ſerve God cheap enough at their coſt and charges: They having given ſo much from themſelves, and all the world; that we need only iſſue out their bounty, and in what we contribute or give forth to Chriſtian Worſhip, are not ſo much liberall as righteous; nor doe we give, but pay. This is ſo, I know it to be ſo, I was glad to finde it ſo: Others gifts have made it, and great is the advantage that comes hereby to Religion and us, from thoſe are now at reſt from their Labours, and their works follow them. I confeſſe, I could not but all along wiſh ſo great a work better done; and ſenſibly complain of infirmities all along: that *impar congreſſus* between undertaking and performance was ſtill in my eye; and another diſcouragement of another Poet:

Sumite materiam veſtris qui ſcribitis æquam
Viribus.——

Beſide that I often wiſhed I had been able but to bring in what my ſelf ſaw the Argument did afford, and in part alſo where it was. But when withall I conſidered Goats hair and Badgers skins to finde acceptance, (for the tabernacle of thoſe had not gold and ſilver: when I remembred the Widows mite commended, who gave of her penury, and not cold water to looſe its reward, leaſt (ſaith a Father) excuſe ſhould be any from want of fewell to warm. Theſe things again refreſhed and encouraged me to the tendry of ſmall things, eſpecially when I called to minde the Great Apoſtles ſtraights, who was fain to take up with a part-bountie, when he had not wherewith to pay the whole: for *Silver and Gold* (ſaith he) *have I none*, (to a Beggar that wanted a Drachme) *but ſuch as I have give I thee*, Act. 3. 6. A ripe Judgment will ſoon diſcern wants enough, and ſo do I; and that I hope

(4) It hath been warily and truely obſerved by ſome that a Chriſtians exercile of his Religion here in England, for the years of ſome Ages paſt, hat not uſuall. coſt him above his ad. *per an.* and that in his voluntary Eaſter collection. The reſt was but the diſburſing or delivering forth what others gave long ſince, and it had been injuſt cenor to pay, as given and appointed by anothers Bounty. As for Chriſtening and Marriage Duties they were extraordinary.

(5) 1 Cor. 9. 19.

is the chiefeſt fault: To have been better furniſhed with books, arts, languages, records, means, company, might both have ſtrengthned many a weak nerve, and ſupplied many an empty vacuity. But yet if but one half hereof be ſtrong, of what I hope none is weak; if a moity true, of what I hope none is falſe; there may be ſo much of it as it is, that he that runs may read, and he that reads and underſtands will not (I hope) herafter dare give leave to his Conſcience to conſent to that, which if he have the honeſty of a Moor or Saracene, he muſt ſtep back and pauſe, and decline; I mean, by reaching out his hand to withdraw that, which if he were one of the Sons of *Pamphilio*, he would let alone, or rather give; or, in plain terms, not dare to with-hold his Tythes, unleſſe he be reſolved to more then covet his neighbours Goods.

This is a point of Religion very low in an age of Religion, and for Religion pretending to ſoar ſo very high; But he that has but this, cannot upon theſe grounds, do this evil, and ſin againſt his God: If there be Civil Right, there muſt be undoubtedly Civil wrong, (for they are Correlatives) fraud, injuſtice, ſpoil, rapine, coveting, thieving; ſome of theſe, if not all: and God grant there be not alſo upon the grounds, and in the reputation of the Common-law, Sacriledg alſo, to meddle with, and in this caſe to pervert what That Law accounts Sacred.

But to come to the Point: (*Det Deus his ſtudiis vela ſecunda meis*: Or rather from more Divine extraction: Now God himſelfe, and the Lord Jeſus Chriſt, and the Holy Ghoſt direct my way; κατευθύναι that it may go right in a righteous buſineſſe:) That which I then propoſe to my ſelfe to aſſert, is, *The Civill Right of Tythes*: and mark thoſe three words, they are ſo many limitations.

1 Theſ. 3. 11.

1. *Of Tythes*: and ſo I meddle not with any other Eccleſiaſticall poſſeſſions or claimes.

2. *Of the Right of Tythes*: and ſo I meddle not with the ſtory, which hath already been both very ſucceſſefully done, and alſo examined.

3. *Of the Civil Right of Tythes*: in evident and expreſſe contradiſtinction from the Sacred.

Which

Which bee it what it will, (there be enough that have engaged themselves *pro & contra*;) The light and brightnesse of the Sun remaines clear in the Firmament after a demonstration: There is fire on Earth, and so are all their Arguments of force for a Divine Right, who claime by it; notwithstanding I shall have shewed there is enough in lower Secular Law amongst us to give right amongst men, by which alone we enjoy all other things; These doe not interfere, but mutually assist and strengthen each other; and the sticking to the one, must not needs be a present and sudden relinquishing, much lesse opposing of the other. To this Text therefore I keep my selfe, not intermedling to weaken or strengthen, or any wayes to interrupt or disturbe their course who move in another higher Sphere; let us both keep to our own, and that is a point of Prudence at least, if not of Justice and Necessity. Neither do I them, or their higher pretensions, any wrong, direct, or consequentiall: For a man may say, the silver Drachme was good and current Coyn, and yet not disparage *Solomons* Gold of Ophir: This Candle burning by me, has light and brightnesse enough to guide my pen, and yet it permits and leaves the Sun a more noble and glorious Planet. The accesse of a lesser strength does not infirm a greater; nor a prop of wood a pillar of Brasse or Marble; nor yet a favourable seconding Law made here, That the God of Heaven shall be Worshipped, disparage the Bible, or Tables of the bosome, where the same was before engraven. We have many things in our Councels and Common Laws, which are in the Scriptures, if no more but this, *Do as thou wouldst be done unto*; which (1) hath been thought Law enough for a Judge; neither does the sticking to them There, say they are not Here, or infer a light regard of them. Who by a Lawyers pleading, a man hath broken our Law by Perjury, and is thereby guilty of high offence, can therby think the prohibitions of the Decalogue despised? or because a Judge layes hold of our Countrey Law to punish Theft or Murder by, can say, He vilifies the sixth or eight Commands by which a man is at Church and in conscience forbid to steale? There may be a Subordination, and is,

(1) *Ex hoc unico Præcepto satis liquet, unicuique ex aquo jus esse reddendam; neque enim alio quocunque judiciali libro opus fuerit. Hæc solùs a meminerit qui sedet in alios judex, nolle se aliam de aliis proferre sententiam, quàm de se ipse latam iri voluerit.* Præfat. in Aluredi Leg. apud Lombard. Archaion. pa 21.

is, between Lawes and Rights, and Crimes and Things; and the laying hold upon any of those of a lower range or series, were very ill interpreted a discountenance, much worse an opposition of the highest. Not disparaging therefore the higher Right, much lesse renouncing it, (and it was needfull to make such expresse protestation) relinquishing it only *pro hic & nunc*, by no meanes disclaiming, yet least of all opposing it; I lay hold of that my Text, *The Title of Civill Right*, directs and holds me to, by no meanes undervaluing or giving just occasion, it may be thought I doe undervalue the Golden Noble by this, that I think I have Silver enough currant Coyn to pay this Debt, and our Secular Laws will here with Us make out a Dueneſſe of Tythes by title sufficient, without troubling or borrowing any thing from the higher sphere of Divine, Naturall, or Eccleſiasticall.

Being thus then confined to mine own Circle, wherin I mean to keep my self religiously without trangressing; and like there to behold little but of Right, and Civil Right, and the Dueneſs of this maintenance of Religion intended. Thus to be asserted thereby, It may not be amisse, it cannot but be very expedient to premise sundry things of Right or Rights in generall, the nature, ground, rise, strength, and originall first growth of Them all, with this intent and purpose: That if we can finde the reason of All, we may the better judge of These: If we doe finde these to have the same strength and bottome to rest on, that all others have (to wit, humane paction and the powerfull word of the severing all-giving Law, which alone incloses all from the common) in the same with others, we may conclude, either these have enough, or none have any; for the same Cause produces the same effect alwayes wheresoever; and if here be the same ground of right, there must be the same right also, why should it not? Now to the top of that I thus propose to my selfe to aym at, I shall ascend as by so many steps; by these six following Propositions, beginning at the bottom, where all was left at first as in a wilderneſſe of Community, and say as followeth.

OF

OF Civill Right.

CHAP. I.

Propoſition I.

BY the Law of Nature all things are (1) common. No propriety aſcertained or cut out to any, but all left as made in a common heap for the common uſe of all men: As beaſts come to the water and drink, but ask no leave; or as (2) the Hoords of *Tartary* which depaſture and ſtay here and there ſo long as their ſafety or entertainment like them; or, laſtly, as ſome ſimple *Indians*, who not knowing the craft of appropriations, think themſelves rich enough, in that every man hath every thing:

(1) *Nec hoc quidem ſecundum Naturam* (ſaith S. *Ambroſe*, ſpeaking of the Philoſophers opinion of the form of Iuſtice, (*ſc.*) to uſe what is common as common; private as private:) *Natura enim omnia omnibus in commune profudit: Sic omnium Deus generari juſſit omnia, ut paſtus omnibus communis eſſet, & terra foret omnium quadam communis poſſeſſio. Natura igitur jus commune generavit, uſurpatio jus fecit privatum.* de Offic. lib. 1. cap. 28. tom 4. page 11.

And, upon this ground, it ſeemes *Aquinas* thought it not unlawfull to re-enter the incloſure in caſe of a poore mans extream neceſſity, there having been a kinde of tacite condition at the beginning, that the fences ſhould hold but till there were a neceſſity of (in part) removing them. So by that occaſion All things return again to All men. 22 *Quæſt.* 66 *Art.* 7. *Utrum liceat furari propter neceſſitatem?* And much to the ſame purpoſe the more ſolide *Hugo Grot.* de *jure Belli & Pacis*, lib. 2. cap. 5. *Sect.* 6.

And Bellarmine: *Quò ad uſum neceſſarium ſunt omnia communia poſitivè, ità ut per nullum aliud jus poſſit quicunque homo prohiberi, quò minùs vivat de rebus à Deo creatis. Atque hinc eſt quod in articulo neceſſitatis non dicatur, neque eſt furtum, ſus ex quocunque loco accipit unde vivat.* de Bonis Operibus in part. lib. 3 cap. 12. Reſponſ. ult.

(2) *Vno in loco non diu commorantur, ratis gravem eſſe infelicitatem diu in eodem loco hærere.* Ortel. Geog. Tab 47. & vide Magir. Geogr. p. 223. & Heylin Microcoſm p. 659.

So man, *in puris naturalibus* (looking (3) beyond coalition into ſocieties, and notwithſtanding any divine law, which approves indeed *(à poſteriori)* partitions made out, and ſtrengthens them) at firſt, and as God and Nature left him, is Maſter of Nothing; but was to take what he had need of, and leave the reſt, (a very Cœnobite) and Another had as much right as He, and He no more right then Another, but He with them, and they with Him, were together to enjoy the Bleſſings of God in Common.

Non Domus ulla fores habuit, non fixus in agris
Qui regeret certis finibus arva lapis,

as the (1) Poet ſpake, with openneſſe and community enough,

Nè ſignare quidem aut partiri limite campum
Fas erat, in medium quærebant, &c.

ſo (2) another: and the grave (3) *Seneca*,

——Pervium cunctis iter,
Communis uſus omnium rerum fuit.

And again, and ſtill ſmiling upon the Free and (4) Golden Age,

——Nullus in Campo ſacer
Diviſit agros arbiter populis lapis.

(5) But by after acts came in Mine and Thine,

Communémque priùs, ceu lumina Solis & Auræ,
Cautus humum longo ſignavit limite Menſor:

as the (6) Orator tells us accordingly, That nothing is by Nature incloſed to ſuch or ſuch a one in ſeverall, but either by firſt ſeiſure, as thoſe that entred upon what was no ones; or by Conqueſt, as what the Souldier got; or by Law, Agreement, Com-promiſe, Lot, &c. and ſo is ſuch a Field ſuch a Mans, or ſuch a Families. (7) *Tertullian* obſerved of his time, *Omnia apud nos indiſcreta ſunt præter uxores*, Every one had his wife to himſelf, but nothing elſe: (It were well if our charity or goodneſſe would enable or permit us approach to ſo great happineſſe;) and of the new freſh inſpired Chriſtians 'tis written, No one ſaid, that *Any of the things*

(3) *Natura dedit unicuique jus in omnia, h. e. in ſtatu mere naturali, ſive antequam homines ullo pactio ſeſe invicem obſtrinxiſſent, unicuique licebat facere quæcunque, & in quoſcunque licebat, & poſſidere, uti, frui omnibus quæ volebat & poterat* T. Hobb de Cive, c 1 Sect 10

(1) Tib. El 1. 3.

(2) *Virg. Georg.* 2 which yet *Lactantius* interprets onely of an open Bounty; having no more of ſtrict import then that of another. *Flumina jam lactis, jam flumina nectaris ibant.* l. 5. de Iuſtitia cap 5. pag 172.

(3) In Octav. Act 2.

(4) *Erant in* Saturni *ævo omnia communia & indiviſa omnibus, vel potius unum cunctis patrimonium eſſet.* Iuſtin. 43 unde in Saturnalibus *Bonorum communio.*

(5) Ovid Met. lib. 1.

(6) *Sunt autem privata nulla Naturâ; ſed aut vetere occupatione, ut qui nondum in vacua venerunt; aut victoriâ, ut qui bello potiti ſunt; aut lege, conditione, pactione, ſorte; ex quo fit ut agro Arpinas Arpinatium, Tuſculanus Tuſculanorum: ſimiliſque eſt privatarum poſſeſſionum deſcriptio.* Cicero de Offic. lib. 1.

(7) Apologet. Sect. 39 pag. 35.

he poſſeſſed was his owne, but they had all things Common, Acts 4.34. and (yet wanted no one any thing, for) as many as had Lands or Poſſeſſions, ſold and brought to the Apoſtles in bank, and diſtribution was made to each (in charity or equity) as he needed.

No more then this doe God or Nature intitle any to by name & ſingularly: Let great Poſſeſſors look to themſelvs, and make much of after inducements (which alone have lifted up their Lordſhips above the level;) and preſerv them, & endevor to keep them whole, and as well the whole as any part: For if the Bank be cut anywhere, the Floud may finde way thereby to run over all; if there be but a beginning to remove the bounds and lay open the fences that have ſevered Dominions anywhere, what is begun may proceed unluckily; and what has been done by any Men, may hap to be revoked as concerning themſelves, and then poor *Codrus* is as rich as *Craſus*, and *A. B.* as great as any of the greateſt.

But to proceed: Say I theſe things as a man only? κατ' ἄνθρωπον, private and fallible? Says not the Law the ſame alſo? Ask either of the three ſiſter Queens; the Canon, Civill, and our Common Laws have ſhared in Government, ſome way or other of moſt part of the Chriſtian world; and doe not they ſpeak home or homeward this way?

The Canon firſt, a (2) wiſe piece, and a competent knowledge whereof doth with us half create a Doctorſhip: And ſet aſide where it ſuperſtitiouſly directs about things not needfull, or lightly takes in the Errours of dark times, or politikely advances the Pope to an (3) univerſall indirect (4) perhaps direct) Dominion, or blaſphemouſly *tantùm non*, advances him to an immenſe ſoveraignty; *Dominus Deus noſter Papa*, is ſaid to be in the extravagants: In other ſerious and ſober pieces of much gravity and great uſe, and thought by many to ſerve very commendably toward the end it pretends to aym at; the well regulating and ordering divers emergent caſes that may ariſe and become doubtfull in the Catholike Church. See then there not far from the be-

(2) See Sir *Thomas Ridleys* view of the Lawes, *par. 1. cap. 5. Sect. 1. pa. 73.*

(3) Vid. Cauſ. 9 qu. 3. Ca. 117. *Totius enim orbis Papa tenet principatum.* Gloſſ. partious ad Decret lib. 3 tit 16. *Nec eſt qui audeat dicere, Domine, cur ita facis?* gloſſ. continetur. ad Extrav 1o. tit. 4. cap. 2.

(4) Vid. Extravag. de major. & obed. cap. 2. in fin. & gloſſ. porrò ſubeſſe. ibid.

ginning, where we have, that (*) The Law naturall differeth from Custome and (super-induced) constitution; for by nature All things are common to All, which was not only observed of those *Act.* 4. but formerly among the Philosophers: Whence *Plato* counts that City best governed where none covets property to himselfe: But by the Law of usage or agreement, This is mine, That anothers. And *Gratian* proves it by a place of *Augustine*, *Jure Divino, omnia sunt communia omnibus*, (*Jure constitutionis, Hoc meum, illud alterius*, is the title of that proofe,) who speaking to those that thought themselves wronged by deprivation for Heresy, He askes: By what right they had their livings? of God, or Man? The one is in Scripture, the other in royall Lawes: Now whence, saith he, are (your) Possessions, but by the last? for by the (1) first, (*The Earth is the Lords, and the fulnesse thereof:*) He made rich and poore alike, and preserves them alike: But by mans Law we say, This is my Farme, this is my House, this is my (2) Servant. And why are humane Laws the Emperours? Because by them God distributes their own to the people. Where the glosse is full, That Possessions are only founded in humane Lawes. And the Text againe, Take away Imperiall Constitutions, and who can say, This is my House, this is my Slave, this is my Living, &c: and to the Emperours Laws forbidding Possession to Non-conformists, some answering, what have we to do with Emperours? Nay, and what have you to do with Possessions? Replyes that Father, Quickly; for Possessions are by These: whom if yee renounce, your possessions are therein involved. This is full; somewhat dark is that before of (3) *Communis omnium possessio*: And before that, the (4) glosse makes a doubt upon the speech of invading anothers, *Nonne jure naturali omnia sunt Communia*? How this? Is any thing anothers? And answers, True: as things are Now. Whereupon the note on the glosse; *Omnia sunt* (5) *communia jure Naturali*: as plaine as can be.

* *Differt autem Ius naturale à consuetudine & Constitutione: Nam Iure naturali, Omnia sunt communia omnibus; quod non solùm inter eos servatum creditur de quibus legitur, multitudinis autem Credentium erat cor unum & anima una, &c. verum etiam præcedente tempore à Philosophis traditũ invenitur. Unde apud Platonem illa civitas iustissima & ordinata traditur, in qua quisq; proprios non sit affectus: Iure verò consuetudinis vel constitutionis, hoc meum est, illud alterius.* Vnde *Aug.* Tract. 6. in Ioan. Quo jure defendis villas Ecclesiæ? & Dec. 1. dist. 8 The place is in *Aug tom. 9. p. 25.*

(1) *Ex hoc videtur quod tantùm jure humano alia possideantur, & non divino.* With answer to an objection. *Vid Gloss. num Iure Divino. 16.*

(2) *Manebat antequam vinum inveniretur, omnibus inconcussa libertas: Nemo sciebat a consorte natura sua obsequia servitutis exigere. Non esset hodie servitus, si ebrietas non fuisset.* As if a drunken mischance were the parent of this lasting inconvenience. *Dist. 35. Sect. 14. c. Sexto die. Sect. Manebat.* (3) *Dist. 1. c. Ius naturale.* (4) *Gloss. Al. ad c. Omnes Leges.*

(5) And though Dominion be by Nature, at large, that all is mans: yet the distinction or partition of Dominions, that such or such things should belong to such or such a man, is from use or introduced civil compacts. *Gloss. Jure subesse, Extrau. 1. de Major. & Obed. c. 1. in fin.*

This

This may be enough for one piece, pretending it self to be a necessary supplementall additament to the Law Christian, or drawing out the general rules thereof in particular expedients (as severall cases require) for governing the Christian world: Next what sayes *Justinian?* He chiefly insists on one branch, indeed the matter of superinduced servitude, yet so as the length of his reason duely extended, will serve also well enough to hem in all other Dominion. In each part of his Compositions he hath somewhat tending this way. In his Institutions first, where servitude (he (6) sayes) is a Constitution of the Law of Nations, whereby, against nature, men are subject to the commands of others: (the very Syllables of (7) *Florentinus* in the Pandects before) *contra Naturam, id est, contra jus naturale, cùm eo jure omnes homines liberi sunt*, sayes the Glosser there: (for by Nature all are free) from divers Autorities. Nor are they impertinent: for in the next (8) title but one, speaking of Manumissing, This freeing from power (saith he) derived it self (onely) from the Law of Nations, or agreement: for by the Law of Nature all men were born free, neither was releasing known, sith there was no such thing as Bondage. But after that by the Law of Nations this Bondage was brought in, then came there also along therewith possibility of Freeing. So now of one sort of men at first. there were thus made three; Servants, Born, and made-free-men: (the very Syllables (1) of *Ulpian* in the Pandects again.) And *tit.8.de his qui sui vel alieni juris sunt*: Servants are in the power of their Masters, which (2) power is of the Law of Nations: And (3) before, Captivity and Slavery are contrary to the Law of Nature; for by this Law all were free from the beginning: And this continued also to the Novels: For in that supplementall addition to all former provisions of *Code, Pandects*, and *Institutions*, The Law of Legitimation there tells us, that (4) Nature made

(6) Lib 1. tit. 3 sect. 2. vide etiam *Aristot. Polit lib 1. cp. 2.*

(7) F. de statu hominum. L libertas. *And*, Quod attinet ad jus civile, servi pro nullis habentur: non tamen & jure naturali: quia quod ad jus naturale attinet omnes homines æquales sunt. De diversis reg. Iur. aut l. 32

(8) Quæres (manumissio) à jure gentium originem sumpsit: utpotè cum jure naturali omnes homines liberi nascerentur: nec esset nota manumissio, cùm servitus esset incognita: sed postquam jure gentium servitus invasit, secutum est beneficium Manumissionis. Et cum uno communi nomine omnes homines appellarentur, jure gentium tria hominum genera esse cœperunt; Liberi, & his contrarium, Servi, & tertium genus, Libertini, qui desierunt esse Servi. *Instit. lib. eodem tit 5.*

(1) F. *de Justitia & Iure. L. Manumissiones.* (2) *Instit. tit.* 8 Sect. 2. (3) *Instit eod. tit.* 2. *Sect* 3 *& vid. F. de condict. indeb. l. Si id quod.*

(4) Natura servum & liberum non discrevit, sed liberam hominis fecit prolem: *and a little after*; Neq; enim a principio, quando natura sola sanciebat, hominis (antequam scriptæ provenirent leges) fuit quædam differentia naturalis, aut; legitimi, sed antequis parentibus antiqui filii mox ut procedebant, fiebant legitimi. Et sicut in liberis natura quidem liberos fecit omnes, Bella vero servitutem adinvenerunt: sic etiam hic natura quidem legitimas produxit soboles, attamen ad concupiscentiam diversio naturalis eis immiscuit, *Novell. 74. cap. 1.*

all

all children free at firſt, it was war brought in Bondage: Even ſo by Birth all were ſons, and one as another at firſt; after-proviſions made diſtinctions. And endeavouring ſoon after to collect and binde together all former reſolutions on this great ſubject to be repreſented in our view, he both (5) repeats this Aſſertion (6), and Phraſes, to Liberty, to be a reſtoring to Nature. Now that what is thus diſperſed of freedom and ſervitude onely, may be enlarged by like reaſon to all Community and reſtraint, we are beholding to the Gloſſe on (7) *Inſtit.* 1. *tit.* 2. which ſtretches out one place, as all other may, thus. Wars and ſervitude are contrary to the Law of Nature, ſaid the text; and what is meant by Wars? Manumiſſion, Reſtitution, Rule, Dominion, and ſuch other things, ſayes *Cujacius* on the place: And upon the other of *tit.* 3. §. 2. Slavery is by the Law of Nations (8), therefore (he inferrs) Domination is from the ſame; and therefore, ſay I again, not from Nature. Wherein the text alſo ſeems to bear him out (and me;) for thus (9) *Hermogenian* in the Pandects. By this Law of Nations (whereby Manumiſſions were poſſible, as before) were Wars brought in alſo, Provinces diſtinguiſhed, Kingdoms erected, Dominions ſetled, Fields encloſed, and many ſuch ſuperinducements, which Nature in her Dictates never acquainted with: the good wiſedom of Man having found them out for quiet of ſocieties, and the great goodneſs of God and religion approving theſe humane inventions.

(5) Natura ſiquidē ab inirio dum filiorum procreationes ſanciret, ſcripſis nondum poſitis legibus, omnes ſimiliter quidem liberos, ſimiliter autem produxit ingenuos. Primo namq; parentibus primi filii, ſimiliter autem legitimi à natura fiebant: bella vero & lites atque libidines & concupiſcentiæ cauſam depoſuerunt ad aliud ſchema; ſervitutem namque invenit bellum, Naturales autem caſtitatis caſus, &c. *Novell. 89. cap. 1.*

(6) *Lib. cap. 9. & ſupra.* Liceat igitur (ſicut prædiximus) patri ſi legitimam non habeat ſobolem, filios reſtituere naturæ, & antiquæ ingenuitati. *Novel 74 cap 1.* &, offerte Imperatori precem, hoc ipſum dicentem, quia vult Naturales ſuos filios reſtituere naturæ & antiquæ ingenuitati, & legitimorum juri. *cap. 2.*

(7) Bella, captivitates, ſervitutes, poſtliminia, manumiſſiones, ut ſacroſancti ſint hoſtium legati, Regna, Dominia, Obligationes, Acceptilationes, Conſtitutiones, ſunt juris Gentium. *Gloſſ.* 13. *Bella.*

(8) *Gloſſ.* Conſtitutio juris Gentium, *a.*

(9) Ex hoc jure gentium introducta Bella, diſcretæ Gentes, Regna condita, Dominia diſtincta, agris termini poſiti, ædificia collata, commercium, emptiones, venditiones, locationes, conductiones, obligationes inſtitutæ: exceptis quibuſdam quæ à jure civili introductæ ſunt *F. de Juſtitia & Jure, L. 5*

Nam Dominia rerum ſunt de Iure Gentium, *and that Text alledged for it.* Gloſ generali Iuri. ad Cod. 3. tit. 22. l. Omnes cujuſcunque.

Yet farther, and from the ſame Volumns it is obſervable, that of that firſt univerſall freedom, ſome foot-ſteps are by the ſame Emperour allowed to remaine yet not cleane wiped out,

out, and of that naturall liberty of things, never yet brought within the bondage of any acceſſary reſtraint, ſome evident both ſigns and inſtances: For, (1) *Quædam naturali jure ſunt communia omnium*, (yet in deſpite of any offered incloſure) *quædam publica (id eſt,) populica, ſc. omnium populorum*, as the gloſſe) *quædam univerſitatis*, *quædam nullius*, *quædam ſingulorum*, ſo and no more. And hee gives inſtance in Ayr, water, Sea, Shore: who has endeavored to (2) incloſe and appropriate theſe, or not given to every man to make uſe of their bounty, as his occaſions ſhould bring him to need them? The River to row, the Haven to entertaine, the Bank to Land, Theaters, Temples &c. Hee might have added alſo High-wayes, which have never yet caſt off their openneſſe of former freedom, or come within the bonds of any private reſtraints; but in all Grants been ſtill reſerved and retaine to themſelves yet what they were at firſt, and are, and ought to be, *viæ publicæ*, without any allowed reſtraint, and for every mans uſe that can uſe them. Crafty appropriations have or can no more hedge in theſe and ſome other gifts of God and Nature, (or God by nature) then the rich can impale to their own uſe the Sunbeames, or cauſe the ſame light not to ſhine to their poore Neighbours comfort, as well as their own, or the inriching raine to fall upon Their own Land, and leave the poore mans barren.

(1) Inſtit. 2 de rerum diviſione in Princ. & F. de diviſione rerum. l. 2, 3, 4, 5.

(2) Underſtand, in the Empire: for ſome kinde of appropriations of ſome of them has been with us made to the King, as ſhall be ſaid.

Thus the current of *Juſtinians* works: That wiſe Law that kept the World in awe, durſt never, never did declare againſt all Community. Plainely it ſpeaks things left at firſt Common, Servitude is by after-inducement; Property as Servitude, and no ſuch univerſall reſtraint yet; but ſome things remaine as free as the Wood for the Bird to come and ſing on what branch ſhe pleaſes, or as the Sun-beames for which the poore man payes no rent, or dreads no quarter day; or like the Fountaine to the wearyed Paſſenger, hee may drink what he will, and leave the reſt, and no one queſtions, interupts or moleſts him.

Come we now nearer home; and what ſaid here our Doctor *Bracton?* he was a great Civilian; and ſome ſay not only

only ſo, but ſuch, a Doctor of the Civill Law, to bring home (as he has) and mixe many of the *Effata* of that more Civill Rule with our barbarous Cuſtomes. 'Tis true, he makes often uſe of the *Code* and *Pandects*; and that which is more, many of his Rules are borrowed *verbatim* from them, and ſo does his Follower, and in moſt tranſcriber *Fleta* alſo; though I wil not enter much diſpute of their Doctorſhips. They are to us a kinde of (1) Oracles, and borrowing their Inſpirations from where before (wherein they were at leaſt well ſtudyed, if not graduated,) wee are not to wonder if they wrote much the hand of that Copy according to which we ſee they did practice to write. The former firſt in very perfect imitation, inſtances chiefly, as *Juſtinian* did, in ſuperinduced ſervitude, which (2) he ſayes, is by the Law of Nations, whereby againſt Nature, one man is ſubject to another: And the like aſſertion he lets fall (by the way) not long (3) after (*poteſtas Dominorum in ſervos à Jure gentium eſt*:) with the ſame enlargement to all reſtraints as the Civilian taught: (4) Some things are common, ſome publike, ſome Corporations, ſome no ones, and ſome every ones: And as by Right remaining yet Common, and according to Nature, he inſtances in Water, Ayre, Sea, and Shore: which retaine their primitive univerſall freedome, and were never yet in bonds to any.

(1) Scriptores huſulmodi apud nos, (*as theſe, Thornton, Britton, &c.*) inter eos quorum doctrina pro ornamentis tantum orationis, in diſputationibus juris noſtri forenſibus ſchoaſticiſque eſſe poſſint nec authoritatem in ſe ferant, vulgò cenſeri ſolent; idque non ſine authoribus magnis. Quod meâ ſententiâ (tantorum virorum pace dictum ſit) non extra errorem ex incogitantia ingentem ortum propagatumque.

Tametſi enim ob vetuſtatem ac intervenientes quæ in æquitate ſunt juris mutationes admodum multiplices; authoritatem in quamplurimis jam non præſtent ejuſmodi quæ deciſionibus, Judiciis Conſultationibuſve per ſe ſolùm ſufficiat, innumera nihilominùs continent, quæ aut etiámnum manent integra nec omninò abrogata, (ut in materie maximè feudali, criminali, &c) aut quæ mores majorum legeſque avitas mutationibus ejuſmodi priores copioſius oſtendunt. Atqs ita certè tam authoritatem è qua Juris interpretatio pendeat eos habere man feſtò in diſputationibus forenſibus ſcholaſticiſq; eſt agnoſcendum quam Ornamento eſſe. *Selden. Diſſert. ad Flet cap 1 ſect. 3. p. 454.*

(1) *De Rerum diviſione. lib. 1. cap. 6 Sect. 3.*

(3) *Lib. eod cap. 9. ſect. 3.*

(4) *Lib. eod. cap 12 Sect. 4, & 5. Add whereto what a little before:* Manumiſſiones enim juris gentium ſunt; Eſt autem Manumiſſio datio libertatis, *i. e.* datectio ſecundum quoſdam quia libertas quæ eſt de jure naturali per jus gentium auferri non potuit, licet per jus gentium fuerit obtuſcata Jura enim naturalia ſunt immutabilia. —— Item ex hoc jure introducta ſunt Bella, cum ad tuitionem patriæ inducuntur à principe, uel propulſantur violentiæ Ex hoc etiam jure gentium diſcretæ, *i. e.* ſeparatæ vel diviſæ ſunt gentes, Regna condita, & dominia diſtincta. Et non ſunt dominia de novo inventa de jure gentium, ſed ab antiquo, quia in veteri Teſtamento, aliquid erat meum & aliquid tuum, & unde tunc erat proh bitum ne furtum fieret, & etiam tunc præceptum fuit, ne quis mercenarii ſui retineret mercedem. Ex hoc etiam Iure gentium agris ſunt termini poſiti, ædificia ſunt collata & vicinata. —— Et generaliter jus gentium ſe habet adomnes contractus, & ad alia plura. *16 cap. 5. ſect. ult.* Much to the mind and words of what was before from *Rome.*

Fleta

Fleta treads for the moſt part his ſteps, and it may not be pleaſing to lead the ſame dance over and over, or to repreſent as a new Show, that which hath in it nothing of variety and novelty; wherefore I only (1) referre to him. And ſo for Dr *Cowell* late of *Cambride*, who profeſſing to mould our Laws according to the patern of the Imperiall (*Inſtitutiones Juris Anglicani ad methodum & ſeriem Inſtitutionum imperialium compoſitæ & digeſtæ*, is the Title of his Book:) In the ſecond, third, and fifth Titles of his firſt Book, and firſt of the ſecond, has the ſame parallel things, and near words; ſhewing indeed, that the Laws were parallels; and, which was his Plot, in theſe things both alike. I may not have omitted the Student to his Doctor; the Authour is both Grave and ſerious, and were he in tranſmittatable Language, might gaine with time, and more Authority after ſome Centuries then he has in preſent: Beſides other places, He delivers himſelfe in his (2) Book thus: It is to be knowne, for ſatisfying the doubt how the property of a mans goods may be altered (as in an Out-lawry) without his conſent; that, The property of Goods (he might have ſaid, of Lands, the reaſon is the ſame; I beleeve he meant both,) be not given to the Owner by the Law of Reaſon, nor by the Law of God, but by the Law of man, and is ſuffered by the Law of Reaſon, and the Law of God ſo to be. For at the beginning All goods were in Common; but after they were brought by the Law of man into certaine Property, ſo that every man may know his own, then were conditions aſſigned; and ſo he proceeds to reſolve his doubt, by that one condition (here) was then, that if a man were Out-lawed, he had nothing as a man not to be truſted, or an enemy &c.

(1) Vid. lib. 1. cap. 3. Sect. 1. & ca. 5. Sect 3. &

(2) Dial. 2. cap. 3 fol. 64.

Many other ſuch plaine Aſſertions are partly in This, and Theſe, and partly in other our next to Oracle-Lawyers, which joyned to what before; give, if not aſſurance, much probability that the truth is, and the nature of things was at firſt, as I ſay, or elſe there would not have been ſuch conſpiring teſtimony. Agreeing Witneſſes is among the ſtrongeſt of proofes, and a likely evidence that they all ſpeak the truth, who all ſpeak the ſame; and as in neighbour Buildings

their help and assistance is mutuall, and ones strength strengthens another; so here. The grave Rules these have been, and prevailing Mistresses, if I may so say, whose words have been obeyed to sway a good part of the past and present Christian World: and they should not have been empty Rattles, (*Vox & praterea nihil*, as he said of the Nightingale,) mear speeches or noyse that went for nothing: The Canon for the Church, the Civill for the Empire, and our Civill for our Monarchy; what can we look for more, or more Authorative, after so great and honourable attestations?

Neither hath the Realty of things been otherwise in existence sometimes, then according to the matter held forth in these Rules: There have been and Are, that have lived and Doe live accordingly: persons so composing themselves that they remaine happy without inclosure or guard, home or own, and they never saw yet reason (which they obeyed) to remove them from the benefis, (esteemed such, with all inconveniences) that they found and had in this they still thought their most expedient Community; some simple Indians retaine it to this day; they will not exchange their Liberty for our Wealth, nor their native, as we count it barbarous freedom; for whatsoever we esteeme better, richer, surer, and nearer, comming unto us under the name of our magnified Civility. They have not our advantages, so neither our inconveniencies, our enriching Property, so neither our emergent vices and troubles. Take away this, there would be no place left for many of those we call Crimes that trouble the World, nor temptations to others, which it might be our happinesse to bee free from, and such as would perhaps goe much toward the balancing of the benefit of our Riches.

Besides, the Primitive Christians lived Thus too: Wee (1) know they did; and many principles of that Religion dispose thitherward. (Mark the just extent of my word and meaning; I doe not say, Thither; but, Thitherward, That way.) They began our religious pattern in a (2) Community,

(1) Vid. Act. 4. 34 & compare Eus. Hist. Eccles. lib. 2. cap. 16. pa. 27.

(2) Glorifying God for your professed subjection to the Gospel of Christ, and what followes? καὶ ἁπλότητι τῆς κοινωνίας εἰς αὐτοὺς καὶ εἰς πάντας: for the simplicity of your Communion to the *Macedonians* and All, 2 Cor. 9. 13.

and

and did not build so evident certainty any where for awhile, as in a flat Level. Give us their simple Charity, we should do the better without our quieting boundaries, or inriching property; make us so meek, humble, gracious, & disposed to be helpfull to one another, (3) contented with any thing, charitable to All, as they were, we should the lesse misse, or perhaps not complaine of any misse at all of our troublesome wealth, nor the scale swaying to any sensible incommodity by that losse, taking in the amends of our then from many vices and troubles most certainly freeing Community. For, (4) Covetousnesse would be a name, theft not in nature, wrangling Suites vanish, fraud remove, guile be a stranger, no injuries known or possible. Those many sprigs that shoot out of that accursed root, *Amor sceleratus habendi*, would not only be lopped off, but the root it selfe, the disorderly affection taken away, even to an impossibility; and with no riches, much innocency, great content, strange quiet, a banishment of many vices, and plenty and enough to every one, with our first primitive simplicity.

(3) Malebant tenui contenti vivere cultu; *as Cicero of his Aratus*: quod est proprium nostræ religionis. *Lactant. de Iustitia. lib. 5. cap. 5. vid. Luc. 3. 14. Phil. 4. 11. 1 Tim. 6. 6. 8. Heb. 13. 5.*

(4) Nondum vesanos rabies nudaverat enses: Nec consanguineis fuerat discordia nota: *This at first: but after*, Tum Belli rabies, & amor successit habendi, *upon inclosures, and in* Iupiters *dayes, when* Saturn *was gone*: Ille malum virus serpentibus addidit atris, Prædarique lupos jussit &c. id est, odium & invidiam & dolum insevit hominibus, *Id. ibid.*

Though I confesse, this was either not generall, or lasted not long with those Primitive Christians neither, for by *Act.* 11. 29. we have private abilities fruitfull in beneficence; and Collections for the poore, which many wayes supposes propriety, 1 *Cor.* 16. & 2 *Cor.* 8. and reliefe even amongst brethren (1) *Jam.* 2. 15. 16. 1 *Joh.* 3. 17.

(1) Iam enim cessarat illa communio & distributio donorum de qua dixi impossibilis erat hæc communio. Creverat enim numerus Christianorum ad plurima millia inter quæ *Cornel. a Lap. in Epist. Iacob. 1. ver. 27 pa. 72.*

But the meek *Essenes* continued so; whose precepts (many of them) hold much correspondency with the ancient Christians, and if they were not such, or their forefathers immediate, many have been deceived (2) who thought them so. Now these trod in the steps of *Justinian* κατὰ πόδα

(2) So St *Ierom*, expresly Catal. Illust. virorum in Philone. *pa.* 102, *tom.* 1. *Euseb. Histor. Eccles. lib.* 2 *cap.* 15. 16. Huic libro Philonis (de Essæis) Suidas titulum tribuit, de vita Christianorum. *Christophorson. annot. Ib.*

and from all ſervility at firſt, which they hated as unnaturall and unhumane, they went on to place in the ſame cauſe All dominion or domination. Two ſorts of them there were; The Students, and the Practiques: (I compare them in ſome things, with the Secular and regular Prieſts; ſome are for Converſation, other ſhould be more for Meditation and Contemplation;) but both of them went together in This ſame way: Take account of them of thoſe are likelyeſt to enform us. *Philo* an *Alexandrian* (3) Jew, and I think Prieſt, tells of the (4) former: That they are not ſerved by Servants, which they account quite beſides natures intention, who made all Free: It was the greedy iniquity of ſome (5) domineering Tyrants, who having gotten power into their hands (perhaps intruſted) changed their rods into Swords, and turned their own Canon given for defence againſt their own Subjects, and having gotten their fellows down, kept them (by ſtrength only of their cruell clutches) and of no more right then force, continued the Uſurpation over their ſubdued fellows. With them, no ſuch thing; for no ſervant, but all free; any farther then they did in love ſerve one another: So the ſervice was performed (mark, their ſervants then were in lower condition then ours; ſlaves or worſe, which made the condition ſeem to ſoft and merciſull men ſo unreaſonable and hard) but by no Tyrannicall conſtraint: the younger ſerved the elder, they took care of the younger, each in love; and no feare, ſcarce awe: But every one made neceſſary Offices his voluntary duty, and thus ſervice with no commandement. This is the ſubſtance; I ſtick not exactly to the words: And for the other ſort, the ſame Author in another Book; Servants among them

(3) Natione Alexandrinus, de genere Sacerdotum. *Hieron. Catalog.* Vbi paulò ſuperius. *So in the Preface to* Philo's *works.* p. 1.

(4) In lib. de vita contemplat. *pa. 696.*

(5) *Very pathetically deſcribed by Lactan. Firm.* Non tantùm enim non partcipabant aliis ii quibus aliquid affluebat, ſed aliena quoque rapiebant, in privatum lucrum trahentes omnia: & quæ antea in uſus hominum etiam ſinguli laborabant, in paucorum domus conferebantur. Vt enim ſervitio cæteros ſubjugarent, inprimis neceſſaria vitæ ſubducere, & colligere cæperunt, eaque firmiter concluſa ſervare ut beneficia cæleſtia facerent ſua, non propter humanitatem quæ nulla in ipſis erat, ſed ut omnia cupiditatis & avaritiæ inſtrumenta coarcerent. Leges ſibi etiam juſtitiæ nomine munitas, iniquiſſimas, in juſtiſſimaſque ſanxerunt, quibus rapinas & avaritiam ſuam contra vim multitudinis tuerentur. Tantum igitur authoritate, quantum viribus aut opibus, aut malitia prævalebant. Et quoniam nullum in his juſtitiæ veſtigium fuit, cujus officia ſunt humanitas, æquitas, miſericordia, jam ſuperba & tumida inæqualitate gaudebant, altioreſque ſe cæteris hominibus ſatellitum comitatu, & ferro, & inſigni veſte faciebant. Hinc honores ſibi, & purpuras, & faſces invenerunt, ut ſecurium, gladiorumque terrore ſubnixi, quaſi jure dominorum perculſis nec parentibus imperarent. *lib. 5. cap 6.*

(ſaith

(faith (1) he) they have none but they do (2) in love (as the other) ſerve one another. They hate dominion both as unjuſt and impious, as clean contrary to Natures law, who made all men equal, not onely in name, but in reality. *Joſeph* the ſon of *Matthias* gives the ſame (3) account; and (4) others: and for the inlarging this reſtraint from ſervice to any Dominion elſe unlawful, as *Cuiacius* did, very pleaſing is that the laſt named Hebrew Prieſt (5) recounts of them in his Hiſtory of the wars of the Jews: They contemne (ſaith he) riches, and all things with them are common, neither is any among them richer then other. They have a law among themſelvs, that whoſoever will follow their Sect (compare that of Chriſt with it, Luke 14.33. *Verily, verily, I ſay unto you, whoſoever forſaketh not all that he hath cannot be my Diſciple*;) muſt make his goods common to them all; for ſo neither any among them ſhall ſeem abject for Poverty, nor any great for Riches; but they have fitting equall Patrimonies as brethren. They hate Curioſity, &c. They have among them Procurators to overſee, (the very picture of the after-Cœnobite, and according to the import of that word) and uſe all things among them for their common benefit, and every one ſeeketh the good of all (compare *Phil.*2.4. *Minde not every one his own things, but every man alſo the things of others:*) and thoſe (Procurators) are choſen from among themſelvs by common conſent. They have many Cities, and if any of their Sect come unto them from another (6) place, they give him any thing they have, as if he himſelf were owner thereof. (Let the Catechumene communicate with his Catechiſt ſo, ἐν πᾶσι, in all things. *Gal.*6.6.) And, in brief, they go in boldly to thoſe whom they never ſaw before, as if they were familiarly acquainted with them: And therefore when they take a journey, they onely arm themſelvs againſt thieves, carrying nothing elſe for their journey. (Compare again that part of our Saviours directions to his Commiſſioned and Itinerary Sanhedrin, *Luke* 10.4. *Carry neither purſe, nor ſcrip, nor ſhoos, and ſalute none: and into what houſe ye enter, firſt ſay, Peace*; *&c.* and in the ſame houſe *continue eating and drinking* what they bring, &c. but more plainly to his Twelve, (heads

(1) In lib. Quòd omnis probus liber, p. 678.

(2) as *Gal.*5.13.

(3) *Antiq. l.d. lib.*18 *cap.*2.

(4) Montagues *Acts & Mon. cap.*7. *ſect.*73. *&c.*

(5) *lib* 2. *cap.*7.

(6) Patent eorum ſodalitia hominibus etiam advenis idem inſtitutum ſervantibus. Omnibus unum eſt promptuarium, unde veſtitus & menſa communis ſumitur, &c. *Philo lib. ead. pag* 679.

(heads of the Tribes, and each a reſemblance of the Hebrews Policie,) *Provide neither Gold, nor Silver, nor Braſs in your purſes, nor Scrip for your journey, nor two Coats, nor Shoos, nor Staves,* Matth. 10. 10.) In every city one is appointed to take care of ſuch gueſts, and ſee they want not cloaths or other neceſſaries, which they never change till altogether unuſefull: (yet fear no want, for they have a Wardrobe everywhere whither they come:) Amongſt themſelvs they nor buy nor ſell, but he that hath what may pleaſure another, imparts it, and ſo taketh without leave of him whatſoever he needeth. Their labour is great to maintain this expence: their fare the ſame, eaten in publick, and with much reverence and devout thankſgiving: and though in all other things they are chiefly tyed in obedience to their Governours, yet in giving they may may be as open handed as they pleaſe, ſave to their kindred, where they muſt have leave of their Supervisors.

Is not this a ſtrange happy life! beyond rich! obſcuring the glory of *Cæſar* and *Craſſus*! if not what ever elſe is here among mortals! and like to laſt too, by their perpetually ſupplying induſtry. Are they not more admirable for this, ſaith *Philo*, then for any wealth and abundance? I confeſſe I was fain to ſtretch my patience much to go on ſo far reciting, being like to ſtop many times by the way, my affections indeed ſcarce ſuffering my intellectuals to make their orderly paces forward; for I never ſaw, me think, in all my life any thing more admirable, or ſo much toward the beſt on earth, and beyond Royal and Imperial. And all this with little, with nothing: as the Apoſtle ſpeaks, *Having nothing, yet poſſeſſing all things.* Give us, I ſay again, but gracious hearts, contented and humble mindes, lowly affections, and true Chriſtian qualifications, fearing God and hating Covetouſneſſe, and we might be ſoon thus rich all, beyond the wealthy; All the poor in the world as their Lords, (and yet they never the worſe) for, (no one greedily griping any thing) every one would ſhortly be Lord of all things. And to ſhew that this may laſt, (if we had but truely loving and not ſelf-ſeeking hearts, ſuch pliable and humane mindes, as men may have) the ſame *Joſeph* tells us, that the ſame *Eſſenes* kept it from all

2 Cor. 6. 10.

Antiquity,

Antiquity, being herein, ſaith (1) another, like the *Pythagoreans*, who held it alſo in their way, and yet wanted ſome good principles tending this way, that were both in the *Eſſenes*, and are in our Religion.

(1) *Goſw. Antiq. Hebr. lib. 1. cap. 12. pag. 57.*

Behold here this ſpeculation reduced to act, that what I ſaid may then be, becauſe it has been, and is: both heretofore and now the ſtage of this world repreſents examples in being to every ones veiw and conſideration. Neither doth this contradict the Scripture: we ſhewed before thence ſome glimpſes of light rather to countenance it, but there is nothing ſure that forbids Community, or commands that Separation which breeds propriety in either page of the Old or New Teſtament. For the Old firſt; where the Story of the Creation tells us indeed, (2) The earth was made, ſtabliſhed, & adorned, and the Parent of the Donation (all that was) that God bleſſed Man, and bade him Multiply, and have Dominion over the Fiſh of the ſea, the Fowls of the air, and every thing that moveth upon the earth, with Herb bearing ſeed for food, and Tree bearing fruit for meat; and *Adam* particularly put into Paradiſe: But what parted place any one ſhould have, or the fruit or royalty of ſo much ground with excluſion of others; or that a partition ſhould be made, One to have This, Another That, this we read nowhere. After when things were (as it appears after) ſeparate, (for *Cain* and *Abel* had their ſeverals, *Gen.* 4.) and after that again confounded by the Flood, the following reſtitution to former ſtate, if we view the renewed (3) patent of the ſupreme Lord, had not much more then the former, but ſpake much in the free and general language of the firſt donation: And if *Noah's* Poſterity had after any Severals, (as we know they had) they were left to divide by humane diſcretion, and each to have no more then what by the Providence of God their own wiſedom could mutually aſſcribe to one another. Which was done, *Gen.* 10. (Hitherto we finde no *Jus Divinum* what every one ſhould have:) for the Iſlands were divided, and 'tis ſhewed by whom, *ver.* 5. and in *Pelegs* time the land (which I take to be the *terra firma*) ver. 25. (and ver. 32.) whence he had his name of *Peleg*, that is, *Diviſion*. After what was in

(2) *Gen.* 1. 28, 29. Deus humano generi generaliter contulit jus in res hujus inferioris naturæ ſtatim à mundo condito, atque iterum mundo poſt diluvium reparato. Hinc factum ut ſtatim quiſque hominum ad ſuos uſus auferre poſſit quod vellet, & quæ conſumi poterant conſumere. *Grot. de Jure Bel. lib. 2. cap 2 ſect. 2. pag 127.*

(3) *Gen* 9. 3. *Every moving thing that liveth ſhall be meat for you, even as the green herb have I given you all things &c. So far from giving any hint of Appropriations, that from things, ſeen they are here caſt down in a heap, ſome fetch argument for a Community: as in* Bellarmine de Bonis oper. in partic. lib. 3. c. 11. Ex certè non obſcura rerum planè communionis veſtigia occurrunt in donatione illâ Numinis, *Gen.* 9. 2. *ſaies Mr* Selden *Mare Clauſ. lib. 1. cap 4.*

in the promiſe to *Abraham*, or Levitical Law, or execution in the Book of *Joſhuah*, all know; but nothing to our purpoſe. Come we then to the New Teſtament: Is there required any ſuch thing as this diſtribution, or bounds ſet, or appointed they ſhould be ſet, what ſhould be whoſe? If it be, 'tis very obſcure, and the lines ſo dim that mark it out, that they and it are by any ordinary eye very hardly diſcernable. Our Saviour bids, give to the Poor, and to *Cæſar*, and to every one his own, and many ſuch things, ſuppoſing Propriety, but then the Propriety was before; He nowhere raiſed fence, but intimated and inſinuated it ſhould be kept.

* Iohn 6. 15. They would once have * made him a King, whereby he might have graſped dominion into his own hands in groſs, which he might have afterwards given out by retaile: But this he per-

(1) Iohn 18. 36. emptorily (if not ſcornfully) refuſed, becauſe (1) his Kingdom was not of this world. The manner and courſe of his life we all know, and that we muſt make the beſt of it, to advance it above Indigency. He often complaineth he had not a houſe to put his head in, and was fain to (2) create as it were a doller to pay his tribute: ſo little he medled with wealth or worldly Poſſeſſions. There was ſome of this very work brought unto him, an (3) Inheritance in groſs, which he was requeſted to be ſo charitable as to divide, to part ſtrife between brethren; but he would not intermeddle for that reaſon which alſo conſtantly ſwayed with him in his whole courſe, he would be no medler, no divider of Inheritances. He did not finde any fault with the thing done, forbidding it ſhould be put in practiſe by others, but rather approves of what he found, by the juſt meaſure of his Acts and Words heeded: for, (argue from his ſilence) he laid not the block of any prohibition in the way, having juſt occaſion; permitting thereby, no doubt, other perſosn, Corporations, States, or Laws to do what they ſhould think good, (which is enough againſt all

(2) *Matth* 17. 27. Obſerve: And this he did that he might be able to ſatisfie an unjuſt order: for the children were free, of whom he was: So far from countenancing the eſtabliſhing of any new Power he might ſeem to ſet up, that meerly becauſe his quietneſſe ſhould not give offence (ἵνα μὴ σκανδαλίσωμεν) he readily ſubmitted to the unjuſt power that was. Sure his Kingdom is leaſt of this world and worldly Dominion As ſure, his Religion rightly taught, or Power duely uſed, will have no operation to hurt any Powers, if juſt, be they what they will: Be ſubject to humane Ordinances as yee finde them, is the pith of the whole; Be contented and quiet, much of the duty of a Chriſtian, as to the publick.

(3) Man, who made me a Iudge, or a Divider over you, *Luke* 12 14. To decline what in the ſame expreſſe ſyllables, (as it is in the *Septuagint*) was objected to *Moſes*, *Exod.* 2. 14. *Conſentus dare Precepta generalia, quæ ad res quaſvis accomodari à volentibus facillimè poſſunt, ſingulorum negotiis me non immiſcebo.* Grot. ad loc.

all Levellers) and he approves and ratifies what they ſhall do for their convenience, by the ſame reaſon for which he would not divide, for neither way would he meddle: Nor ſhould the Court-Chriſtian interpoſe in ſecular Affairs, or Religion diſturb the quiet world, but leave things as they are found, and let worldly men diſpoſe as they will their worldly Inheritances. Conſidering (in our depraved eſtate) the Corruption of our Nature, it can hardly be conceived how we ſhould do well, or frame to quiet (ſo many as there be of us, and of manifold mindes and tempers) without partition, which might render it neceſſary he ſhould (*à poſteriori*) approve thoſe by Laws the Community of men ſhall make for quietneſſe and ſtinting the Common, which he does in ſubmitting, and commanding to ſubmit to the Powers that were: But that he ſhould take the matter into his own hands to formalize properties, or erect or give order for any ſet Courts to order or diſpoſe of them: This I believe will never be made good from any thing He or his Apoſtles did, or 'tis ſaid, that they either effected, or intended, or gave any neceſſary command for any ſuch thing, or ſo much as that Partitions or Proprieties muſt be, from any leaf or line of the Old and New Teſtament. They may be, as ſhall be ſaid next, and theſe do not contradict but confirm; but that they ſhould and ought, this is not ſhewed.

Wee ſee then, as to the firſt Propſiotion, that Propriety is not neceſſary, nor was it natural: The Canon, Civil, and Common Laws found all left in a Community: ſome ſimple Nations continue ſo ſtill: the firſt Chriſtians began in a level: The *Eſſenes* held it up long with great applauſe, nor is any thing in Scripture found in prohibition of continuance, if we had but gracious humility, and true love to make us capable of ſo great a happineſs. But yet then we are in a wilderneſſe: And what muſt we needs ſtay there? Nature indeed made not, commanded not partitions, nor God (the revelation of whoſe will is wholly ſpent at utmoſt in toleration.) But may not the wiſedom of man proceed further by Gods permiſſion? though not *ex vi præcepti*, by force and impulſion of any ſtrict command, yet by taking the leave, ſeems given, in that

it is not denyed: Queſtionleſs, yes, Humane (1) Prudence is a ray from God, ſhining dimly in the bottom of mans earthly heart, and has not hitherto directed all men amiſs that by the light thereof have found out any Good; their own, or that they had an own, or that an own was, or might be. God loves man ſo well, that he loves every Good of man: the Good of Society, the Good of Order, the Good of Peace, the Good of Benefit, even to that outward Beſtial part, whereof yet the divine Soul is a bleſſing and ſanctifying inmate. All which Goods being ſo nearly concerned and highly advanced by, This is Mine, we cannot look upon our good God as careleſly neglecting, or enviouſly nilling that man ſhould reap any fruit or benefit of that wiſedom (which is alſo his gift) whereby he is enabled to finde out any of theſe Goods ſo much for his glory; whence, with much likelyhood, ariſeth this ſecond Propoſition, That although God and Nature left things at large, yet,

(1) Ratio nihil aliud eſt, quàm in corpus humanum pars divini Spiritûs miſſa. Sen. ep. 66.

There

CHAP. II.

Propoſ. 2.

THere may be impaling (2) propriety; for elſe much of the Good even of Good things would be loſt; the ſtrong ('tis like) would tyrannize over the weak, the lazy partake as much fruit of his vice, as the induſtrious of his dilgence; at Harveſt, he that laboured ſhould reap no more then he that loytered; and ſuppoſing the moſt evidently ſeene corruption of our nature, that (3) which ſhould be Every ones, (to take care of and enjoy) would be No ones: Nor could confuſion but be the fruitfull mother, bringing forth many daughters worthy her ſelfe. Beſides, argue as Chriſtians: The Law would be ſuperfluous, the Commandement evacuated, *Thou ſhalt not ſteale*, Nothing; for there would be nothing to ſteale, or have. No poverty, no riches, no purloyning, no reſtoring, no fraud, no injury, no wrong, no right, which are all founded in *Meum & Tuum*, & would be taken away even beyond the very roots, to an impoſſibility, if theſe be taken away. No charity to Neighbours, no hoſpitality to Strangers, no bounty to Friends, no more then moſt magnificent Chriſtian bounty in relieving Enemies, if &c. Yea, the exerciſe of all Chriſtian and morall vertues, that act about giving and receiving, were not only ſuſpended, but preſently deprived of their very being. No making bags which wax not old, which our Saviour counſelled:

(2) *Though to neceſſity all ſtill looſe poſitive, yet for Dominion, only negative, ſc. that they are not abſolutely divided*, ſed tamen permiſſum eſt ut dividerentur, ſi id ipſi generi humano videretur expediens. Quemadmodum cum paterfamilias moritur, & filios in commune relinquit hæredes. hæreditas quidem eſt eis ex teſtamento Communis, ſed negativè, non poſitivè: Et ideò nihil prohibet, quo minus eam inter ſe dividant & una pars unius, altera alterius efficiatur propria *Bellarm. de bon. oper. in partic. lib. 3. cap. 11.*

(3) Minimè autem utile hominibus fuit quod hujuſmodi habuerint in Omnia jus Commune Nam effectus ejus juris idem pæne eſt, ac ſi nullum omnino jus extiterit. Quanquam enim quis de re omni poterat dicere, Hoc meum eſt, Frui tamen ea non poterat propter vicinum, qui æquali jure & æquali vi prætendebat idem eſſe ſuum. *Th. Hobbius de Cive, cap. 1. Sect. 11. & vide cap. 2. Sect. 3.*

Luke 12.33. counſelled: no collection for the poor Saints which are at
1 *Cor.*16. *Hieruſalem*, which the *Corinthians* uſed: no laying of a good foundation for the time to come by rich diſtribution,
1 *Tim* 6.17. which *Paul* counſelled; & he was himſelf ſuperfluouſly care-
*Philem.*v.18,19. full of paying that of debt *Oneſimus* to *Philemon*; he neither did, nor, as things were, could pay, becauſe he, nor any body elſe, had any thing to pay. A hard word for Creditors, there could be no paying of debts: An impoveriſhing word for States, farewell all Tributes: The rich mans gold Ring and coſtly Apparell had been nothing elſe but a crime, or a gracing
Iam.2.2. encroachment upon others Rights, which yet St *James* blames not, but preferment in Religion hereby: And, the poor man an impoſſibility, and empty name, a Nothing, forasmuch as poverty is by compariſons, (*felix nemo niſi comparatus*, nor yet miſerable:) and this muſt be with the Rich, which yet is not, nor indeed One nor Other, not Any one that has Any thing. In a word, all Sentences, Admonitions, Exhortations, Rules, Deciſions, ſuppoſitions of Scripture everywhere could nowhere take place, unleſſe the Community left by God and Nature, might be aſcertained and ſevered by the following prudent conſtitutions of men, and after-Lawes; and a good part of the Book of God would bee but an empty Letter, without ſentence or ſence, if all thoſe words ſtood voyd of meaning, which doe not require, but ſuppoſe appropriations. Take together what Mr *Rogers* has, plaine but ſubſtantiall upon the 38 Article of the Church: The Article it ſelfe, is in direct affirmation of what we ſay, *That the riches & goods of Chriſtians are not common, as to the right title and poſſeſſion of them, as the Anabaptiſts vainely talk, though every man be bound to diſtribute largely*: (agreeing herein with the 65 Article of the Church of *Ireland*:) upon the firſt poſition, whereof thus he: *Againſt Community of Goods & Riches be all thoſe places (which are infinite) of holy Scripture that either condemn the unlawful getting, keeping or deſiring of Riches, which by* (1) *Covetouſneſs*,

(1) If any that is called a brothrr be a fornicator, or covetous, &c. with ſuch eat not, 1 *Cor* 5 11. Covetouſneſſe, let it not be once named among you, as becometh Saints, *Eph.* 5.3 Beware of Covetouſneſſe, *Luke* 12.15. which is Idolatry, *Col.* 3.5. the root of all evil, 1 *Tim.*6.10. Let your Converſation be without it, *Heb.*13.5.

(2) *Theevery*,

(2) *Theevery*, (3) *extortion, and the like wicked means many do attain: or doe commend* (4) *liberality*, (5) *frugality*, (6) *free and friendly lending*, (7) *honeſt labour, and lawfull vocations to live and* (8) *thrive by:* All which do ſhew that Chriſtians are to have goods of their own. Thus far Mr *Rogers* according to his Text, of which thing there was ſo much regard that a little before the compoſition of thoſe Articles, it was intended to have been marked for an Hereſy to be of a contrary opinion: *ſc.* in the intended Canon Law by vertue of ſome Statutes in *Hen.8. & Edw.6.* time: where if the 32. had proceeded, as in part they did, and their conceptions received life, and quickning power by ſetting to the Seale of due and lawful Authority, it had been then (9) the 14th of the hereſies there to be condemned, to maintain Community. But thoſe Canons were onely caſt, not mounted, not ever yet of power to do any Execution in this Church or State: But others have plainly, fully, and actually (10) ſpoke it out both heterodox and heretical. Biſhop *Hall* long ſince preached with applauſe enough upon 1 *Tim.6.*17. that certain Hereticks, called the (11) Apoſtolicks, before St. *Auſtines* time, in his time our Country-man (12) *Pelagius* (or (13) *Morgan*, for that was his true name here, becauſe he dwelt by the Sea, at leaſt the name imports ſo much) and ſince divers Separatiſts have maintained Community, al-ſufficiently confuted by the word of his Text, *Charge the Rich.* 'Tis alſo laid to the charge of the Manichees by S. *Auſtin* (14) of *Julian* the Apoſtate, by

(1) Let none of you ſuffer as a Thief, 1 *Pet* 4.15. Servants, no purloyners, *Tit* 2 10.

(3) With a brother extortioner eat not, 1 *Cor.* 5.11. Nor thieves, nor covetous nor extortioners ſhall inherite Gods Kingdom, 1 *Cor.6.* 12.

(4) Bleſſed to give, rather then to receive, *Acts* 20 35. yea, and that thing ye doe to all the Brethren throughout *Macedonia*, 1 *Theſſ.* 4 10. If a Brother or a Siſter be naked and deſtitute of daily food &c. and yee give them not thoſe things are needefull for the body, what profiteth it? *Iames* 2. 15, 16. *& Vide* 1 *Corinth.* 9 6.

(5) If there be any that provide not for his own,

and namely thoſe of his own houſhold, he denyeth the faith, and is worſe then an Infidel, 1 *Tim.*5.8.

(6) From him that would borrow of thee turn not away, *Matth.*5.42. Lend, looking for nothing again, *Luke* 6.35.

(7) Let him that ſtole ſteal no more, but rather labour that he may have to give, *Epheſ.*4 28. Wee warned you, that if any would not work, hee ſhould not eat, 2 *Theſ* 3.8.

(8) Theſe hands have miniſtred to my neceſſities, and thoſe that were with me, *Acts* 20 34. Wee laboured day and night, that we might not be chargeable unto any of you, 1 *Theſ* 2.9.

(9) *Excludatur etiam ab iiſdem Anabaptiſtis indulta bonorum & poſſeſſionum communitas, quam tantopere urgent, ut nemini quicquam relinquant proprium & ſuum: In quo mirabiliter lo quuntur, cum iuſta prohiberi divina ſcriptura cernant, &c.* Reform. Legum Eccleſiaſtic. de Hæreſibus, cap.14 pag 14.

(10) *In his Sermon called*, The righteous Mammon, *not far from the Beginning.*

(11) *Vide Epiphan. hæreſ.*61. *pag.*506. *Auguſt. hæreſ.*40.

(12) *Aug. ſt Epiſt.* 89. *contra Pelag. & Manich. Quæſt.*4. *tom.*2. *pag.* 154. *& Epiſt.* 106. *contra Pelag. page* 85.

(13) Nam *Mor* æquor, pelagus; *gan* apud vel juxta ſignificat. *Spelman Concil pag* 46. So *Pelagius* in Latine gives and is given by *Morgan* in Welſh, or, as wee would call him, **At Sea** in Engliſh: which name is contracted and uſed frequently enough at our Sea Coaſts.

(14) *Lib. de Moribus Eccleſ. cap.*35. *tom.*1. *pag.*331.

Gregory

Gregory (1) *Nazianzene*, of *Dulcinus* and *Margarita* among the *Novatienſes*, by (2) *Caranza*, and the Familiſts and (3) Anabaptiſts, all Sects, or names of hatred and averſation enough that they would down with all Fences, remove all Boundaries, unſettle the Land-marks, and reſtore all Incloſures again to their firſt and natural Community: which certainly they could nor can others ever do without bringing themſelvs within the compaſſe of thoſe ἄνομοι καὶ ἀνυπότακτοι, ungoverned men, 1 *Tim.* 1. 9. ἀνθιτασσόμενοι τῇ ἐξουσίᾳ, meerly croſs to lawfull power, *Rom.* 13. 2. κυριότητα δὲ ἀθετοῦντες, in (4) St. *Jude*'s phraſe, that regard not Authority a ruſh: yea, ἀνυπότακτοι, ματαιολόγοι καὶ φρενοπλάνοι, men out of their wits, as well as out of their duty, as St. *Paul* to *Titus*. That the corrupt, ſelf-loving, deceitful, unjuſt world keeps it ſelf either ſafe, honeſt, or quiet, refers it ſelf chiefly to theſe binding, and to every man his own bounding laws and appropriations, and, by conſequent, to remove and tear them up, can be nothing elſe but to betray the world to miſery and unquietneſs, and all the effects of, worſe then Poverty, Deſolation and Confuſion.

(1) *Orat. 4. contra Iulian.*

(2) *In the life of Clem. 5. fol. 432.*

(3) Th. Muncer *eryed us up ſtrongly in Germany*, Schl. Comment. lib. 5. in Princip.

(4) By whom they are alſo ſtiled *Dreamers*, (whoſe great pretence of quicker reaſon then ordinary is ſcarce yet half awake) that defile the Fleſh, (and yet pretend the Spirit) ſleighting not onely *Dominum*, but *Dominium*, the civil Magiſtrate, and the Magiſtracy, blaſpheming Dignities, and yet *Moſes* did not raile at the Devil, *ver.* 8, 9.

So notoriouſly bad that as a great Mountane that is onely viſible at a diſtance *Eneeb* the ſeventh from *Adam* could fore-ſee, and did fore-ſhew of them then: γογγυσταὶ, μεμψίμοιροι, κατὰ τὰς ἐπιθυμίας ἑαυτῶν πορευόμενοι. diſcontented men, alwaies finding fault with their lot or portion, (be it what it will) walking after their own luſts, or greedy covetouſneſſe, and yet confident, that will ſpeak any thing, &c. *ver.* 16.

Thus are we advanced two ſteps, and 'tis hoped on firm ground: that partitions or proprieties are not of nature, yet (of much need, and by Religion) they may be: How? is the next enquiry; and this makes way to a third Propoſition, *ſcil.* that

That

CHAP. III.

Propoſition 3.

THat which boundeth and ſevereth humane Properties is humane Law: which, for the ending of Strife, preſervation of Peace, maintenance of Societies, and bettering that we call Humane Good, the wiſedom of man hath found out, and the wiſedome of God in his Laws (whether divine or natural) does not diſallow but confirm, for the bettering the condition of our humane frailty, and making our troubleſom earthly life more quiet, calm, and comfortable amid all our infirmities and tempeſt-breeding corruptions. This is that Chymiſts fire that ſets the ſeveral forms in compounded bodies on work to excite and raiſe themſelvs up to cauſe diviſion, and thereby ſeparation, that the potential parts may come in ſingle out of the heap, and that which might be diſtinct, may be. The fan that ſeparates one thing from another, this from that, which were before in the common heap; the *Calamus menſura*, or mete-wand wherewith (1) *Ezekiel* was to meaſure and fit the ſeveral proportions of the Sanctuary; and wherewith are meaſured out unto us every ones propriety, and limited and proportioned: The ſquare, rule, fence, meaſure that helps to cut out properties and divide them, parts the common, and encloſes it, appoints of the whole how much every man muſt have, imprinting the Characters of *Meum* and *Tuum* upon the divided parcels, and circumſcribing each with (2) *Noli me tangere*, meddle not with anothers,

(1) *Chap.* 40.

(2) Ex dominio ad modum jam dictum privato introducto evenit, ut territorii ſeu agri, cujus uſus univerſis pariter erat in arando, ædificando, depaſcendo, arbores cædendo, fructus percipiendo, tranſeundo liber, proprietas ità poſſidenti, ſive per diſtributionem, ſive per occupationem, privatim acquireretur, ut is liberum ejuſmodi uſum jure poſſet impedire, nec ejus injuſſu alius licitè uti poſſet. Atque ab hac origine manavit omnium rerum proprietas ſeu dominium, quod ſive alienatione, ſive quacunque aliâ ceſſione in alios tranſfertur, ſive poſſeſſione retinetur. *Seld. Mare Clauſ. lib* 1. *cap.* 5.

others, touch not pitch leaſt thou be defiled, lay not a greedy and unjuſt hand upon anothers, leaſt it burn thy fingers. Would we have that which reſembles *Dido*'s Thong, whereby ſhe parted that which was hers, from his ſhe bought her little plat of ground of, calling This, City; That, Countrey? This is it. Would we behold that Sea-banck, that bounds the raging and impetuous Waves, ſpeaking in the word as 'twere of an Almighty Creator, Hither ſhall you come, and no further; Here ſhall your proud Waves be ſtayed; That reſtrains, I mean, the raging, ravenous, impetuous, inſatiable deſires of mans greedy, reſtleſs, covetous minde, telling him, He ſhall have This, and no more, It is enough. He muſt and ought be therewith contented. The Law, the Law doth this alone, ſetting up every one his *Hercules* Pillars, how far he ſhall come and no farther; His bounds that he cannot paſſe, nor turn again to any of that community he has thus by his own Act excluded himſelf from, and may not re-invade though he never ſo much deſire it. *Tolle Jura Imperatorum, & quis audet dicere, Mea eſt illa villa, aut Meus eſt ille Servus*, &c. as replyed S. *Auguſtine* to ſome wo asked him, what they had to do with Emperours? And a little after: *Per Jura Regum poſſidentur Poſſeſſiones*, The Laws of Kings give us our Lands: (which was worth remembring, having been laid down at large before:) And ſo the Student to his Doctor: The Law of Man gives man what is his, and therefore may regulate, and therefore may make conditions, one of which is ſuch as there reſolvs the doubt in hand: And Mr *Selden*, ſpeaking of Right, and Civil Right, and the particular Right of theſe Dues we call Tithes, makes their ſtrength here immediately founded in humane law. *page* 14. *of the Preface to his Hiſtory.*

And this is very reaſonable: for the Law is ſuppoſed every ones Act; what is thereby impaled, Every one to have an hand in the encloſing thereof, even he that would claim Reentry, but has hereby excluded himſelf from any ſuch juſt hope of: For, (1) *Quod tangit omnes, ab omnibus debet approbari*, and ſuppoſed ſo done, that what is paſt in Law, is paſt by

(1) *Reg. Jur. Can.* 29.

by all, and therefore some endeavouring to give what Law is, have described it to be nothing else but (1) the agreeing voice of the Community. *Nil tam conveniens est naturali æquitati* (saith the (2) Emperour,) *quàm voluntatem Domini volentis rem suam in alium transferre, ratam haberi*: There is nothing more agreeable to natural equity, then that he that would have what is his transferred to another, his will be (upon signification) obeyed. If then I had any thing, and transfer it to another, or another his part-share in any thing, and transfer the whole unto me, nothing more equal then that he or I reap effectually the fruit of our own acts, and in vain shall either endeavour to reclaim, or blame any hard measure, if the thing so parted with, be held fast, and not resigned, without the explicite act of (3) his will, to whom it hath been sufficiently and fully intrusted; As when the Tenants shall release to the Lord their part of the common, (or to one of themselvs,) or nineteen co-parceners their whole parts to the twentieth. Forasmuch then as the Law is every ones Act, and what is thereby done, all have had a hand in doing; Nothing is more fit then that what is done by it, binde all, and be the parting thong, the bounding fence, the last Arbitratour above any appeale; Because, whatever restraints, limitations, admissions, exclusions have happened to be madeby it, every man is supposed to have been at least the part-maker of, and so ought not to go against his own Act, nor attempt return to that himself has shut himself out from by his own consent, ex-presse or implicite.

And this, as it is a sufficient title, so 'tis the best: unhappy times, and worse the men, when the force of any storm shall drive men from this anchor of safety, to shelter in any other harbour their tottering propriety. Shall things remain in their common Mass undivided? Then much of the good will be lost. Or shall partitions be made out? I ask, by whom? If by me, partiality may blinde my eyes, or deprave my judge-

(1) Lex est commune Præceptum, virorum prudentum consultum —— Reipublicæ sponsio communis, *Bracton. de rerum Divis. cap. 3. & F. de Legibus, Senatûsque l. 1.*

Reipublicæ sponsio, id est, interrogatione factâ consule, & communiter à populo factâ responsione quòd sic placeat esse statutum. *Glos. 16. or rather,* Omnes homines qui in Rep. aliqua versantur, facilè consentire legibus suæ civitatis, *as the notes upon the Glosse.* πόλεως δὲ συνθήκη κοινὴ, καθ' ἣν πᾶσι προσήκει ζῆν τοῖς ἐν τῇ πόλει. *Marcian. ib. l. Nam & Demosthenes.*

Lex vocabulum in contractibus in toto Iure nostro accipitur pro Conventione, *ut docet Zasius, &c. Kahl. Lex. Iurid. pag. 526.*

(2) *Instit. 2. de rerum divisione. Sect. 40.*

(1) Ità suum est quod privatim possidet Dominus, ut aliûs esse, ejus injussu, omnino jure esse nequeat. *Seld.* ubi supra.

ment to carve too much for my ſelf, too little for others. If I refer it to my neighbour, he may be guilty with me of the ſame infirmity. Shall both refer to ſome third good man? nothing is more miſerable then to depend of anothers will, and to wait his Courteſie, eſpecially for the things of life and neceſſity. I may ſtarve, while he think me not in any want, and being an unexperienced Judge of another mans need, when I want meat give me Phyſick. The Law, the Law therefore is the fitteſt and onely equal certain Umpire between both, even before my ſelf or any other; 'Tis an Oracle of Truth that never ſpake errour, the Rule of Right that can do no wrong; Others paſſions may wrong us, or our own vices, but Juſtice never. 'Tis a ſign of the worſt times, when any mans will or judgement ſhall be made the mete-wand of another mans eſtate and ſufficiency, and I ſhall have that he onely thinks me fit to have. He may love to day, where he hates to morrow, and give his paſſions leave monſtrouſly to act, and then where am I for light to walk by, when the variable Moon turns her dark ſide toward me? Beſides, if we, attended with thoſe covetous deſires, which never, but as a ſhadow the Body, attend our frailties, ſhall come to divide out of the common heap; I may ſay, my Neighbour hath too much; He, with more confidence, my diſproportion is in the exceſſe; A third, we Both, and then when our Judgements are thus divided, it will not be long ere our paſſions fight, armies are muſtered, hot Pharſalian Fields pitched, and ere long ſpred with Carcaſes, and hardly avoiding this when any arbitrary Interpoſitions ſhall hinder that to be the Rule of every ones Own (and enough) which alone ſhould, the Law. That therefore and that alone is, I ſay, the onely fit equall arbiter and Judge of what each State, Man, or Condition ſhall have, the firmeſt bottom for Rights to ſettle on, the onely carver and diſtributioner that hath both given and ſetled ſeveral men in their ſeveral proprieties. Happy are the daies when her voice is heard in the ſtreets, Bleſſed the men that believe her Oracles: No work hath been done better of diſtribution or retribution, then what hath come through her fingers; no property is ſettled firmer, then what has her unmoveable

moveable Equity for a Baſis to ſettle upon.

But now, foraſmuch as ſhe appeareth in divers forms, and the parts not onely different, but ſeeming croſs one to another, whence would follow ſhee may, according to her ſeveral *Effata*, ſeem ſtill to ſettle things divers waies. It may be therefore needful to conſider her ſeveral *ſpecies*, or indeed not ſo much their contradiction, as ſubalternation, (whereout is likelyito be hammered alſo ſome other Obſervations,) and to this purpoſe I ſay, (ſetting aſide that of the Canon into *Jus, & Fas*; *Humanum, & Divinum*,) Humane Laws are either general or particular. The firſt whereof, as having the whole, or moſt of Mankinde conſenting, doth therefore fitly obtain the proportionably ſpreading name, of the Law of Nations or univerſal; the other (like a by-law in a pariſh, made up in exception to the Law of the Kingdom) foraſmuch as its made onely by ſome, and calculated for the Meridian of a particular place, is therefore as fitly ſtiled Local or Special. For Law it ſelf is chiefly compact; a mutual conſent among the Conveners, that ſuch a thing ſhall be ſo or ſo: who happening to be either the Generality or ſome Few, the Community of All or a ſingle Countrey, the Citizens of the world or the Citizens of ſuch a city, Commenſurate to the number of Conveners comes out a proportionably extenſive Name, and of All or Some agreeing, we ſay, Law is either univerſal or particular, General or Special. Beſides both which, there is alſo *Jus Naturale*, as a third branch, (or the law of Nature) uſually ſo made: but becauſe the reign hereof is alſo among brutes, perhaps among all Creatures, we reject it; firſt, as confining our ſelvs to humanity: Then, for that that we call the Law univerſal or of Nations is often confounded with it: for becauſe Nature taught it all Nations, therefore it may be called from the Miſtriſs, as well as from the Subject, and ſo the Law of Nature is (as it commonly uſed too) another name of the Law of Nations. *Diſt. 1. cap. 1.*

Theſe things thus premiſed, make way for a fourth Propoſition, and as hitherto things have been repreſented,

left, 1. In Community, yet, 2. Restrainable, 3. By Law; so that Law being manifold (the latter, I note by the way, over-ruling the former, not so much contradicting as excepting,) and it coming to passe, thereby that Right may be settled by it accordingly many waies: *sc.* In the world by the Law universal. In any place by the Law of that place; Hence my fourth Proposition: *scil.* that

That

CHAP. IV.

Propoſ. 4.

That which gives Legal or Natural Right univerſally in the world, is the Law of Nature, Nations, or univerſal.

I call them ſo promiſcuouſly, for the reaſon before: and think they have power to give this propriety from another reaſon aſſigned a little before that, for that all ſeem to have paſſed their conſent to the making of them. Nothing is more reaſonable, (as was ſaid) then that every man ſhould be bound up by his own act: Foraſmuch then as men ſeem to have agreed in the Law univerſal, and they have paſſed their conſents to ſome ſuch general Axiomes (*Generalia pacta Societatis humanæ,*) as theſe; as that, What I have is Mine, unleſſe there be better title; What I finde is Mine, Chance endowed me therewith; what does *accreſcere* to my Field, is Mine by accretion, and the like; If a thing be by any of theſe waies transferred unto me, I have, no doubt, in the world a good title to it, and may account it juſtly Mine hereby, without any farther doubt or queſtion. Whiles it was others, it was in their own power, but now (to allude to S. *Peters* killing Argument) ſith they have parted and ſetled it with conſent thus upon me, why ſhould they go againſt their own act, and not but voluntarily leave unto me, what the Law, every ones Agreement, hath caſt upon me? This is by ſome called the Law of Reaſon, becauſe 'tis the work of Reaſon, the reſult of Reaſoning, and that general Agreement in all mens breaſts that runs through the world, hath ſtamped it for allowable, current and authoritative: what I have by it, I have then by

all

all mens allowance, and ſo Conſent the life of the Law, and foundation of dominion cannot but have ſetled me a ſufficient title and undefeaſible.

Thus it obtains generally, but in ſome particular States or places it may not be ſo: A by-law over-rules the Common (not by croſſing, but excepting, as was ſaid before) as in ſtinting of Commons, impoſing penalties, &c. And ſo a particular State or Kingdom may lay reſtraint where the general hath left at large, leaving the Gate of Liberty open, where the people of the world have ſhut it, or ſhutting, yea locking it up faſt where they have left it open. This makes it needfull for me to conſider where I live, and whether any particular exception of the Place ſuſpend not here the general Rule of Right and Righteouſneſs? As if it do, what is Juſt in it ſelf, is not now Juſt; That which ſhould be mine abroad in the world, here is not mine. Whence ariſeth a fifth Obſervation: That though 1. Nothing by Nature be mine, yet 2. ſomewhat may, which 3. the Law gives, 4. in the world the Law general: yet

Cum autem lex Civilis aliud conſtituit, eam obſervari debere jus ipſum naturæ ſtat. Lex enim civilis quanquam nihil poteſt præcipere quod jus naturæ prohibet, aut prohibere quod præcipit, poteſt tamen libertatem naturalem circumſcribere, & vetare quod naturaliter licebat, atq; etiam ipſum dominium naturaliter acquirendam viſua antevertere. *Gro. de Iure Belli. pag.* 132.

In

CHAP. V.

Propoſ. 5.

IN any particular place, that which gives me full right and true property to any thing, in that place is *Lex Terræ*, or the Law of that Place; either 1. confirming the general (which had put me in poſſeſſion before) poſitively laying down, or negatively ſaying nothing; or 2. limiting, or excepting by ſome ſpecial title to me, and ſaying that in ſome new way there I ſhall have this or that ſetled upon me. Which be it how or what it will, and the local deciſion ſettle to my gain or loſs from the general, yet am I to content me therewith, as being now there no longer a Citizen of the world, but a Citizen of that place, and muſt be ſatisfied to have the Right of my Right altered, diſpoſed and tranſpoſed according to them and their prevailing topical conſtitutions and conſiderations. Moſt men love not onely variety but ſingularity, to have things go their own way, and it often pleaſes how much it is the more ſingular: If I light upon any ſuch diſpoſition in my ſelf, croſs to what I there finde, and it be much to my prejudice that Common Right prevaile not, as I would, I muſt not quarrel with my Stars, or wage war with a Multitude, ſetting the whole hive in combuſtion becauſe they will not make honey my (ſeeming beſt) way; but meekly and quietly rather yeeld to be carried along in the paſſengers boat, then ſtrive to draw all out of the way, to go my new way, though the better, tractably conforming my ſelf to the orders of the Corporation I finde, rather then making a rent in the Body by ſeditious diſturbances, and (ſo the things be not diſhoneſt nor impious) make that rule in the Poet a Law to me,

Cùm fueris Romæ Romano vivito more.

In

In ſhort, this is ſure, nothing is Mine juſtly in any place, but by the approbation and authorization of the place, whoſe onely Law ſeals me a ſure title, and without it I am nothing in whatſoever I poſſeſs but a crooked Uſurper. While the world laſts, men will both love and go ſeveral waies; and though they keep, or are willing to be kept in by moſt of the general Rules ſeem agreed on by mankinde, yet in ſome particulars, for clime, ſite, neighbourhood, religion, or if it be but for varieties ſake they will vary: Here for me to plead the geneneral Rule (of Right or Equity) were to act indeed a good part, but on a wrong ſtage, and in truth to be a quarrelling, offenſive, hurtful member which muſt be removed, and as a noiſom humor purged out, unleſs I maſter and conquer mine own unreaſonableneſs. The Law of the Place is that therefore I muſt conform to in the place where I am, and in that Charter finde the title of my whole Inheritance, or elſe it is truely and juſtly none of Mine.

But I am yet but as it were beyond ſea, or nowhere. All this is nothing (immediately) to what is here, and what with us individually is chiefly to be regarded.

This brings me to my laſt Propoſition, not ſo much diſtinct from that next before, as ſubordinate to it, or graffed upon it, and ſetling the truth thereof to the Clime and Meridian where we live, (for which all the reſt was intended, and prepared,) and it is This, That

---

Here

CHAP. VI.

Propoſition 6.

HEre in England, that which gives me right or title to any thing, is *Lex hujus Terræ*, or Our Law. This is the Baſis of all Engliſh property, and grand Charter by which every man holds his eſtate with us: The Fortune-teller, yea, the Fortune-giver, and Maker, and Creatour of all Right and Title among us, which lets in firſt light of poſſibility of fraud, injuſtice, or any wrong, and that alone gives place to the 8th Commandement, ever to take any place, *Thou ſhalt not ſteal*; for, *Where is no Law, is no tranſgreſſion*: if we had no right, we could have no wrong; and in bare taking how could I be accuſed to ſteal that which is no mans, but is now by law indeed anothers?

By Law here I underſtand that which under ſundry heads has been of ſuch force with us: As the Law of Scripture firſt, which is not here a Law onely, but a Law of Laws; whatſoever is here done againſt it, is ἀνομία, as againſt the Law of the Land: and farther, if any Law be made againſt it, that Law is a grievance and an offence, and thereby both unlawful to obey it, and the order it ſelf null, as more then revocable revoked, as if it were made againſt the great Charter. (Upon which ground alſo *Diſmes* are here due, ſaies (1) a very good Lawyer.

Doctor & Stud. Dial. 1. cap 6.

(1) *Id. ibid. fol. 13.*

Then have we the Law of (2) Reaſon, or Nature, or Nations, taken in likewiſe into our Code or Canon, ſo that whatſoever is done againſt the ſame (generally received) is againſt Our Law, as was ſaid of the imbraced Scriptures

(2) *Rep 7. Calvins Caſe. Doct. & Student. Dial. 1. cap. 5.*

(1) *Because it is written in the heart, it is never changeable by no diversity of Time or Place, and therefore against this law, Prescription, Statute or Custome may not prevaile; and if any be brought against it, they be not Prescriptions, Statutes, nor Customes, but things void and against Justice.* id cap. 2 fol. 4. *as a crooked Rule, made by a streight, to make right lines by.*

As in the Empire: Omnes cujuscunq; majoris vel minoris administrationis universæ nostræ Reipublicæ Iudices monemus, ut nullū rescriptum, nullam pragmaticā sanctionem, nullam sacram Annotationem, quæ generali Iuri, vel utilitati publ cæ adversa esse videatur, in disceptationem cujuslibet litigii patiantur proferri: sed generales sacras constitutiones modis omnibus non dubitent observandas. Dat. Kal. Iul. Constantinopol. So the Emperour Anastasius. Cod. lib. 1. tit. 22. ult.

(2) *General: whereof the Student to the Doctor*, Dial. 1. cap. 7. *as the third ground of the Law of England: or particular, whereof* cap. 10, 16. Bract. lib 2. Sect. 2.

(3) *Whereof the Body given by* Bracton, Fleta, &c *from times before.*

(4) *Vide Doct. & Stud. Dial. 2. cod. cap. 11.*

(5) *Cook Instit. 1 fol. 11. b.*

(6) *Cook ibid & Instit. 4. cap. 22. pag. 134, &c. of the Court of Admiralty proceeding according to the Civil Law.*

(7) Atqui interea, è locis superiùs ex Iure Cæsareo ab Iurisconsultis Nostratibus, *Fletâ* utpote autore, *Bractonio, Thorntono* celebertimis ac Iudiciis cum primariis (quantum ad posteriores binos attinet) Præfectis, ita allatis expressímque indicatis, atque in rerum quas tractârunt probationem & argumenta sic adhibitis, ídque velut authoritatem aut saltem rationem cogentem præ se ferentibus, manifestum fit, Vsum qualemcunque neque eum adeò obscurum apud Majores nostros eo in seculo juris ejusdem, atq; illius librorum in discussionibus nostris etiam ex jure Anglicano definiendis invalusse. *Not with intent to submit this Kingdome to Cæsar or his Laws, or relinquish our own,* —— sed ut, tum ubi deesset nostri Iuris præscriptum expressius ad rationem etiam Iuris Cæsarei ratione suffultam recurreretur, tum ubi Ius utrumque consonum, etiam Cæsarei quasi firmaretur, explicaretúrve res verbis. *Seld. ad Flet dissert. cap. 3. Sect. 4. pag 472.*

(8) Cook on Littleton, *Sect. 648. fol. 344. & of the Iurisdiction of Courts, cap. 74 p. 321.*
Doctor & Student, Dial. 1. cap. 6 fol. 11.
Artic. Cleri 9 Edw. 2.
Cricumspectè agatis. 13. *Edw. 1.*
Stat. of 24. Hen. 8. 12.
Sr Th. Smith *de Repub. Anglican. lib. 3 cap. ult.*

to us Christians; and (1) this likewise, as that, a Rule of Laws. Also that law of Reason, spun out into certain, as it were derivative branches, which are so many sorts of that wee call positive Law; as,

(2) Law Customary,
(3) Law Common.
(4) Law Statute.
(5) Law Maritime, or that of *Oleron*, published by our *Rich.* 1. there, but of English mint, though there cast and named; the English Sea Law it is made at *Oleron*: The (6) Civil Law also, as in our Courts of Admiralty, and Marshalsey, and generally supplying (7) the defects, and eeking out the imperfections thereof by its larger spread body, extending thereby to many particular either determinations or reservations, helpfull where the brevity of our shorter Rules and Maximes of Prudence could not reach.

Lastly, the several pieces of allowed (8) Canon, fitly called the Kings Ecclesiastical Laws: which though ministred by Church-men, is, or was, one of the Kings arms of Justice, whereby he reached out his helping power, and exercised some part of his Ecclesiastical Jurisdiction to some persons, and in those Cases it concerned him to have both ended, and thus ended, and accordingly was.

All these are so many Oracles of Justice, Pillars of Right, Distributioners

Distributioners of property, and Umpires of strife, authorized sufficiently so to do, and to give me any thing that they do give me, and what is so done or given is lawfully; and if any thing be so setled upon me it is questionless (1) mine. And as by these, so generally by writing, or custome, by statute, or canon, whatsoever in the true judgment of Courts, and common reception of those that are not mistaken, is Law; That is the same pillar of property, assertour of Rights, foundation of dominion, strength of title, and giver, maintainer, preserver, defender, assurer, and protector of a man in that he so has: as an oracle it tels him truly what is his, as more then a Prince he gives it him, and makes it wrong, injury, fraud, theft, usurpation, injustice, (and these things only possible this way) if it be taken away from him.

(1) *And of such a Law of Man that is consonant to the Law of God, it appeareth who hath Right to lands and goods, and who not: for whatsoever a man hath by such Laws of man, he hath righteously; And whatsoever is had against such laws, is unrighteously had* Dr. & Stud. Dial eod. cap. 4. fol. 8.

And for this purpose all these are equally and alike sufficiently operative. There is no choice; for where all are the same, and have the like cause of power, one must needs be as good as another.

In every Law positive well made is something of the Law of Reason, and of the Law of God. Id. fol. 7.

All our law is in some sort, (derivatively, mediately, at second hand) the voice of God approving all just pactions, and humane positive lawes, and so his stamp is upon every part; and he that resisteth, in any, resisteth the Ordinance of God. Neither have we any other: These are the alone limitations, banks, and boundaries, that hedge in, and hedge out, giving certain admeasurement, as the law-word is in some case, of properties, to so very many as there be among us, making us know our home, and giving our home, which none but they can do in this various world. For the Divine Law immediatly is of no force; the severing by Tribes, or cutting by *Joshuah*'s thread served but once, unless for example, (and so I beleeve much use hath been made of it here, more then we are aware of or do readily understand, our (2) Shires, Hundreds, Tithings, &c.

(2) Aluredus Rex (*who as all grant made our politicall division*) ubi cum Guthruno Daco fœdus inierat, prudentissimum illud olim à Ietroue Moysi datũ secutus consilium, Angliam primus in Satrapias, Centurias, & Decurias partitus est. Satrapiam Scyꝑe, à Sꝛcyꝑan, quod partiri significat, nominavit: Centuriam hunðꝑeð: & Decuriam ꝛeoþunꝫ, sive ꝛienmanꝛale, id est, Decemvirale Collegiũ appellavit, atq; eisdem nominibus vel hodie vocitantur. *Hence our Tythingmen, &c. And a little after:* Decrevit tum porro Aluredus liberæ ut conditionis quisq; in Centuriam ascriberetur aliquam, utq; in Decemvirale aliquod conjiceretur Collegium: De minoribus negotiis Decuriones ut judicarent, ac si qua res esset difficilior, ad Centuriam deferrent: (*like the steps of Appeal, Exod* 18. 21. *Deut.* 1. 16 17.) Difficillimas deniq; & maximi momenti lites Senator & præpositus in frequenti illo ex omni Satrapia conventu componerent. *Gloss. ad Lambard. Archaion. pag.* 217. *in vocab. Centuria. Approved by Dr. Cowell in his Interpreter. in vocab. Hundred. And compare farther Ioseph Antiq. l.* 3. *c.* 3. *and* 2 *Chron.* 25. 5. *Some glimpse hereof appeared to the publisher of Sir* H. Spelmans *late larger work of Tythes. pag* 41.

Coming I verily beleeve at first from the patern of *Judah, Levi, Simeon and Benjamin*, by exemplification:) If any man should attempt it, he might be partial; if none, the thing not done: so that supposing a partition needful, and some to doe it, and no revelation from heaven, (save in paterne or general rules,) we can lay hold of no other umpire or Judge like to be fit to do it, then that voice of wisedome (implying all mens consents) which is in the Law; the gracious goodness of God assisting the grave wisdom of man, yea, inabling and authorising it to set bounds hereby to our appetites, & master our unreasonable, proud, headstrong desires; giving lust a law, covetousness a law, the hand a law, nay, the eye a law, that it may not so much hereafter as greedily covet what is anothers. This is that which bindes the Bear and shackles the wolf, lays fetters upon our wilde and forrest desires, that else would make us very apt to hearken to temptation to be preying one upon another. But this restraines our fury, and locks up the Lion in the grate, bidding, yea forcing all to goe home and be content with their own; *Sorte tua contentus abi*, and cast not a fruitless, sinful, greedy glance upon the inclosure of thy neighbour.

To give instance in some particulars: From this law thus received amongst us it is, that I am to succeed in my fathers fee: I have right to succeed, I may claim my right; and I have wrong if I be kept out of my due & lawful inheritance. For our Law hath divided much land into such tenures, (upon reasons of profound wisdom not discernable to every comon apprehension,) that hath willed I should succeed my father, if his heir; I am his heir, nay, though a daughter, and therefore I must and ought to succeed.

It is not so in (1) other States, nor was it in ours if it be

(1) As in the Ottoman Empire where the Timars are much the same with our military Benefices, obliging estates for life, upon death the State disposes, as of our Ecclesiasticall Benefices; that falling not by inheritance, there may be still choice of fitting men; *vide* Knoll. *Turk. Hist.* in his Appendix of the Turkish kingdom fol Aaaaaa: and that learned and judicious observer, Sir *Henry Blount* has also the same, who was lately among them, *p.* 65, 66. and before them Mr *Selden* in his Titles of Honor, *par.* 2. *c.* 12. So 'tis also in the Great Mogols State, lately erected and supported by them: *vide Purch. Pilgrim l.* 5. *Append. ad c.* 6. *p.* 543, 544, 545. *Edit* 1614. And Scanderbeg used the same policy also in Epirus. Now all this might have been well enough here, for the same thing hath continued, and is yet well enough in the Ecclesiasticall State, nor wrong thought by the ruling Constitution, if when the man dye, the widow and children are presently strangers: Nay, even in some nearer parts of Christendom as to secular succession too: for the Glosse on the Feudall Law, speaking of the old way for life onely: *Et hoc adhuc obtinet secundum rigorem consuetudinis in feudo Marchiæ, Ducatus, Comitatus, vel alterius regalis dignitatis ab Imperatore datæ, quoniam illud feudum finitur cum persona accipientis; quia hæres in eo non succedit, nisi ab Imperatore investiatur, Gloss. ad vitam, ad feud. l* 1. *tit.* 1. *sect.* 1. And 'tis true, it is so in the Text. De Marchia vel Ducatu, vel Comitatu, vel alia regali dignitate si quis investitus fuerit per beneficium ab Imperatore, ille tantum debet habere, hæres enim non succedit ullo modo, nisi ab Imperatore per investituram acquisierit: *lib. eod. tit* 14. Though perhaps it be not strictly executed: But this, it seems, the Law.

right

right feodal, where the fee was either for (2) life, so long as the known *Miles* lived, or for his son after him, (excluding his daughter,) though since the daughter was admitted because she might marry a Souldier, and so both she and the son new admitted: It was not so (and the law just while it was) but a military Benifice, as to succession, as an Ecclesiastical.

(2) Or not so long, but *dum bene se gesserit*, at first, as an ecclesiasticall man keeps his Benefice, or as Tenants at the will of the Lord, to be outed upon distaste, as a stipendary servant from his ten pounds a year. For the Fee was nothing but so much land given for observance: To suppresse outrages, maintain the Lords title, and help keep the rest in awe. Take the best anthority, *Antiquissimo enim tempore sic erat in dominorum potestate connexum, ut quando vellent, possent auferre rem in feudum a se datam*, (retained to this day in Castleguard, saith the Glosse, as a Generall discharges a Captain at pleasure) *postea verò eò ventum est, ut per annum tantum firmitatem haberent: deinde statutum est ut usque ad vitam Fidelis produceretur:* (so an involved condition of Loyalty.) *sed cum hoc jure successionis ad filios non pertineret, sic progressum est, ut ad filios deveniret: in quem sc. dominus hoc vellet beneficium confirmare;* (so now, to a man and his son, no more:) *quod hodie ita stabilitum est ut ad omnes æqualiter filios pertineat:* (not, as in Gavelkinde, divisible, which was unusuall in Feus: as Sir *Henry Spelman* in Gloss. p. 257. but to one and all successively, (for so many lives he had, the father and all his sons, that All might succeed in All:) for before onely one was taken in, *ad quem, &c.*) Afterward (about the year 1025.) the favour was inlarged: 2. *Cum verò Corradus Romam proficisceretur, petitum est à fidelibus, qui in eius erant servitio, ut lege ab eo promulgata hoc etiam ad nepotes ex filio producere dignaretur:* (Now Grand children taken in; understand immediately to succeed their Grandfather, their Father dead:) *& ut frater fratri sine legitimo hærede defuncto, vel filius in beneficio quod eorum patris fuit succedat:* (now to his father immediately, so here in a second succession a third possession secured, to a man, his son, and that sons Brother; or to a man, his son, and that sonnes son: But this held not unlesse the first Donee were in the line ascendant:) *Sin autem unus ex fratribus à domino feudum acceperit, eo defuncto sine legitimo hærede, frater ejus in feudum non succedit;* and so goes on to regulate and limit other remoter, or collaterall successions, ending at last in, *In masculis descendentibus hodie novo jure usque in infinitum extenditur.* Gerardus Niger. Feud. lib. 1. tit. 1. By these degrees things crept up. Sr. *Tho Ridley* acknoledgeth two sorts of Feuds, Temporall, and Perpetuall: View of the Laws, par. 1. chap. 4. sect. 2.

(3) For the Lumbards, from whom the Feuds first came, or at the least were chiefly derived from them, directing all their policy, as the Lacedæmons did, to matters of warre, had no feminine Feuds, among them; But after by processe of time, there were created as well feminine Feuds, as masculine, &c So goes on Sir *Thomas Ridley* in the same Section. And the reason is given more explicite by *P Reb ff Quin fœmina non potest ita bene defendere dominum in Bello, vel aliàs servire sicut vir: ergo nec feudum habebit, cùm detur ob servitium:* (though by custome it be in France otherwise:) *Feud. Decl. p. 3. Septimò.*

The bottom of all is that of the Ruling Law: Hoc autem notandum est, quod licet filiæ ut Masculi patribus succedant, legibus tamen à successione feudi removentur: similiter & earum filii, nisi specialiter dictum fuerit ut ad eas pertineat, *Gerardus Nig. lib, & tit. eisdem, sect. 3.*

And so 'twas in the Salike law; wherein *inter cæteros spectatissimus est iste paragraphus: In terram Salicam Mulieres ne succedant:* or as others more fully; *de terra vero Salica nulla portio hæreditatis mulieri veniat: sed ad virilem sexum tota terræ hæreditas perveniat: apud D. Spelman. Glossa. page 442. in vocab. Lex Salica.* The meaning whereof has been expostulated at the cost of Armies of men, and Millions of treasure between us and FRANCE: a few lines are not fit to interpose for umpirage, after so many and horrible contestations.

Again it is somewhat special here, that if I have a wife and she be an inheritrix, and I have a child by her whose life is discernable by crying, that (1) child shall give me the land (otherwise a stranger) for term of my life, and it is *per legem Angliæ*, or *per curialitatem Angliæ*, by the law or curtesie of this place, (favouring no doubt marriage and fruitfulness which if it were elsewhere and common, what means (2) saith *Littleton*, the appropriating title, that this is done by that favour hath denomination from England? And in some places the husband shall have (3) half the wives inheritance with us, he superviveing, though he have no issue, this also giving a right by the place which is not elsewhere.

(1) Lex quidem Angliæ est, ut si quis uxorem hæreditatem habentem duxerit, vel aliam terram habuerit in feodo ratione mariragii vel alia causa donationis, quod feodum habeat & liberum tenementum, si liberos inter se habuerint ex justis nuptiis procreatos; si ipsa præmoriatur, remanebit viro terra mulieris tota vita ipsius viri, sive superstites fuerint liberi sive mortui, dum tamen sonum emiserint aut clamorem, qui audiatur inter quatuor parietes, si hoc probetur. *Flet. lib. 6. cap. ult. sect 4.* *But this is only of the first Husband.*

Vid. Bracton de Except. cap. 30. sect. 7.
Littleton. lib. 1. cap. 4. sect. 35.
Dr. & Stud. Dial. 1. cap. 7. fol. 14.

(2) Et est appel tenant per le Curtesie D'engleterre, par ceo que ceo est use en nul auter Realme forsque tant solement en Engleterre. *Littleton. lib. 1. cap. 4, sect. 35.*

(3) *Dr. & Stud. Dial 1. cap. 10. fol. 21.*

Further the widow relict here shall have the (4) third part of those lands had been her husbands ordinarily, and by the custome in some County (5) half, and in some Town or Burrough the whole for life: It is not so in (6) other places, and yet their wives are women. And this with that assureance that the law allows her a known (7) writ to recourt by, and *de jure dotium*, is a head enlarging into much of our law, whereof others have little. This I take it, is in special favour of women here, and this the best reason I have met with: and while it is so, there is as much right in this (the like not elsewhere appearing) as there is here for any thing in this Kingdom.

(4) Rationabilis autem Dos est cujusli bet mulieris de quocunque tenemento tertia pars omnium terrarum & tenementorum, quæ vir suus tenuit in dominico suo, & ita in feodo quod eam inde dotare poterat die quo eam desponsavit. *Bracton. lib. 2. cap. 39. sect. 2. fol. 92.*

Vid. Flet. lib. 5. cap. 23. sect. 11 pag. 341. *Glanvill. lib 6. cap. 1. & cap 17.* *Littleton. lib. 1. cap. 5.*
Mag Chart c. 7. & *Chart. R Ioan. apud Matt Paris.* *ad ann. 1215. pag. 247.*

(5) *Dr. & Stud. Dial. 1. cap. 10. fol. 21.* *Littleton. lib. 1. sect. 37.*

(6) Romanis non in usu fuit uxoribus dotes retribuere: ideo verbo genuino carent quo hoc dignoscitur: & rem ipsam in Germanorum moribus miratur Tacitus, &c. *Spel. Gloss in vocab. Dotium p. 216. col. 1*

(7) *Nat Brev. fol. 6.* *Brast. de actione dotis, c. 1. sect. 2.* *Flet. lib. 5. cap. 25.*
Glanvill lib. 6. cap 5.

Escheats

Eſcheates alſo, and ſtrayes, Fines, and Herriots (againſt which ſome keep now a grumbling that are worthy onely their own low thoughts, as if all were too deep their ſhallow capacities cannot reach, and juſtice folly be cauſe fools underſtand not wiſdome) the Landlords relieve, the Church-mans mortuary, a quitrent, a days work, Eſchuage, (1) foldage, (2) Chevage, (3) Chiminage, I doubt not all theſe are as due to thoſe can claim then by law, as mony lent, the publike tribute, the landlors half year, or any thing is out of ones own poſſeſſion; though whither other ſtates have the like I know not, or what is equivalent to them, we are to walk by our own rules not by theirs, and that which here with us gives right, is enough though in other places it do not. We may ſay as well as the Empire, why not? having equal power within our ſelves to chuſe our own rules, (changing but a few neceſſary names:) *Jus Quiritum eſt propriè Romanorum, quod nulli tenent niſi Quirites id eſt Romani. In quo agitur de legitimis hæreditatibus, de cretionibus, de tutelis, de uſucapionibus, quæ jura apud nullum alium populum reperiuntur, ſed propria ſunt Romanorum, et in eoſdem ſolos conſtituta.* Diſt. 1. cap. 12.

(1) Faldagium eſt privilegiũ erigendi & circumagendi faldæ ſeu ovilis per certam camporum extenſionem, eorum ſtercorandi gratia, & gregis fovendi? *Spelm. n. Gloſſ. in voc. Falda. p 248. It ſeems a priviledge the Lord had to pen upon his land all the ſheep fed in his Manner.*

(2) *A kinde of tribute paid to the Lord as head or chief, in token of acknowledgment of his.*

Chevagium dicitur recognitio in ſignum ſubjectionis & dominii de capite ſuo: Et quamdiu Chevagium ſolverint ſervi, dicuntur eſſe ſub poteſtate dominorum, nec ſolvitur dominica poteſtas. *Bract. lib. 1. cap. 10 ſect 3.*

Fugitivi eſſe incipiunt niſi Chevagium annuum Domino ſuo ſolverint in ſignum ſervitutis. *Flet. lib. 1 cap 7. Sect. 7.*

(3) *A tribute that Woodmongers and others, paid to the Fee-farmers of the forreſt toward the ways. They were called* Chemini, *from the French word* Chemin, *for a way.* Volumus & ſtatuimus etiam quod decima de fœnis ubicunq; creſcant, ſive in magnis pratis ſive in parvis, ſive in Cheminis exigantur. *Lyndewood Conſtit. Provinc. cap. 1.* Quoniam propter. Et, pax quatuor Chiminorum: —— & Chimini minores de Civitate in Civitatem, *leg. Edvardi Confeſſ. cap. 12. It was four pence a year for a Cart, and a penny for a horſe: due and ſo limited by* Chart. Foreſt. cap. 14. in Pultons abridg. pa. 8. & vid. Matth. Pariſ. Hiſt. in Charta. R. Iohan. p. 250.

I might farther inſtance in ſome other, (proper rules of right for our clime) but I fear the porch too big, (which yet if it be, may ſerve for other uſes then to be onely here an introduction;) wherefore but to point.

Abroad

Abroad the use of havens, banks, rivers, &c. is publike and unrestrained, but with us (2) the Kings, (whence he requires new impost.)

Things (3) lost and found the finders, but our sea-wracks (4) the Kings.

Treasure trove, (5) the guift of fortune, meant for the finder, but with us the Kings.

(1) De divisione rerum. l. riparum. Instit. 2. tit. 1. sect. 4. Bracton lib. 1. cap. 12. sect. 6.

(2) Sed publica hæc quæ totius populi aliquando fuerunt, jure nostro ad regem transferuntur: quippe qui universi populi atq; adeo ipsius Reipublicæ personam sustinet. Qui itaque in ripas fluminum publicorum naves hodie exonerant, vectigal Regi, aut jus ejus habentibus solvunt. Et in flumine publico nemo piscatur, qui à Rege hanc libertatem non obtinuit. *Cowell. Instit. Iur. Angliæ. lib. 2. tit. 1. sect. 4. vide Bracton. lib. 2. cap. 1. sect. 2.*

(3) Instit. 2. tit. 1. sect. 47.

(4) Cowell ib. sect. 7. Bracton de Corona cap. 3. sect. 4. fol. 120. Fleta lib. 1. c. 43 sect 2. pa. 61.

(5) Acquiritur dominium per inventionem, ut si Thesaurus inveniatur, *Bracton. lib. 2. cap. 3. sect. 3. but to whom?* Cum in nullius bonis sit & antiquitus inventoris, nunc de jure gentium efficitur Domini Regis. Id. de Coron. cap. 3. sect. 4. fol. 120. Fleta, ubi supra.

That was no ones, the (1) Takers, (as fish, foul, wilde beasts, &c,) but with us again (2) the Kings; and so generally we are ruled by our selves: Our own law is the measure of our own right; we have that, and that alone, but that firm, and it is injury, and that injury alone to dispossess us of, that our own nationall, home-binding Laws have setled as they have; That, is Here nothing else, right or wrong.

(1) Quod enim nullius est id ratione naturali occupanti conceditur, *F. de acquirerum dom. l. 3.*

(2) Bracton lib. 2. cap. 1. sect. 2. & cap 24. sect. 1. Fleta lib. 3. cap. 2. sect. 1. Cowell Institut. loco citat: sect 12. De feris, piscibus, avibus illud notandum est: Qui imperium habet in terras & aquas ejus lege impediri posse aliquos ne feras, pisces, aves capere, & capiendo acquirere eis liceat: atque hac lege etiam teneri exteros. Ratio est, &c. Nec obstat quod sæpe in jure Romano legimus, jure naturæ aut gentium liberum esse talia animalia venari: hoc enim verum est quamdiu nulla lex civilis interceedit; sicut lex Romana res multas relinquebat in illo primævo statu, de quibus alia gentes aliud constituerunt. Cum autem lex civilis aliud constituit, eam observari debere jus ipsum naturæ dictat: *Gros. de jur. Bell. 2. 2. sect. 5.*

Some seem to go farther, in requiring to property in the Common-wealth a right in Religion; to have a right in Christ or none in the Creature, for whose sakes is that question cut out: *An dominium temporale fundetur in gratia?* or as others, *An gratia sit fundamentum dominii temporalis?* but (besides that, the discussion hereof moves properly in another sphere,) I beleeve if they be understood aright, their desires may not be altogether irregular: for of that Civill Right we speak of, they require and seem to have enough in civill

Civill determinations. To purifie ſo the conſcience in the ſight of God, they may ſay perhaps we muſt have more; our nature amended, by Chriſt ſanctified, and by application of him himſelf owned, and ſo only to the Pure are all things Thus pure: But to peace and order and right among men, here the determinations of the lower ſcene are enough; and he breaks humane laws that couzens or ſteals what is but ſo ſetled by them; and by conſequent Gods, becauſe Mans.

It were hard to ſay, that, as on the one ſide a ſanctified man ſhould finde no more ſweet in Gods bleſſings of the ſame kinde then a heathen or a publican; ſo on the other, that any ſhould be ſo vain to think that a wicked man is thereby an out-law, having no faſter ſeat in his poſſeſſions, then that a godly neighbor may turn him out of doors to morrow, and by vertue of his ſhare in Chriſt (the heir of all things) create himſelf a principality in preſent of all the wicked mens wealth in the world. The Indian is ſure maſter of his own gold and ſpices; the King of Spain of his Indies; and a Jew or Turk of their ſeverall Owns; nor can the moſt deboiſt Ruffian amongſt us (worſe in ſome regard then *Turk*, *Spaniard*, or *Indian*) but be ſo true and rightfull a Maſter of his own wealth, that his moſt helliſh wickedneſs cannot turn him out of it in this world, (unleſs his prodigality do) that he ſhould be henceforth a thief of his own wine or cates, or ſo meer an uſurper that any of Gods ſervants may uſurp from him indeed, and rob him as the Iſraelites did the Egyptians in equity and conſcience. Far be this from every one has truly learned Chriſt ſo to think or do. 'Tis fit every ſwine have his own ſtye, every dog be let alone in own kennell: The grace of Chriſt teaches us to uſe our own, not cenſure others; to be thankfull for what we have, not covet what is other mens. There were that it hath been laid to their charge they have endevoured to ſubvert thoſe laws, to bring in the Civill, and do ſome ſuch things as *Stephen* was accuſed to ſay Jeſus of *Nazareth* meant, *To change the Ordinances that Moſes gave them*, *Acts 6. 14. & vid. Cap. 21. 21.* So theſe, what K. *Alured*, St *Edward*, King *Edward*, *Henry*, *Elizabeth*,

James, and other Law-founders have with much bounty of wisdome distributed out unto us: But if, this would have been such a transcendent attempt both of folly and tyranny that it would have ushered in more injury then ever the Conqueror could, who changed the Governor, but could not the Laws, kept and was forced to keep that body intire, only he set himself a new head at top, and would have rendred them questionless guilty of that *Crimen læsæ Majestatis*, or highest offence, whereof *Glanvill* speaks in the very beginning of his Book, *De nece vel seditione domini Regis vel Regni*, leaving little else for a foraign Enemy to do, sith the taking off these would consequentially have taken away all things. For pretend they to amend hereby what they would, bring in the twelve Tables, the politicall part of the wise *Alcoran*, the Partidaes of *Spain*, Arrests of *France*, or whole voluminous bulk of *Justinian* and *Accursius*, there could have followed nothing else with us but unsetledness of all mens estates, (which are the gift of our Law alone, and by that alone guarded and preserved) disorder, ignorance, multiplicity, uncertainty, and to those that had any thing the worst undoing even by law, and that this should settle them besides their own, all they are now owners of: For new instruments must have a new work, a new-fashioned rule draw a new-formed line, a new Law have a new Righteousnesse, and so our Fees, Socages, Burgages, Claims, Entries, &c. would all have been put out of their old course, into another, that new, and perhaps not consistent with our Government, perhaps, not with our selves; and in a word, a New right, and what were then become of the old, and All, as many as had any thing by it? Some would have stuck to this; others to that; another parcell to neither; a fourth (only to the right) that we had and is best because fittest, and used, loath to stay in *Babylon* when they saw hopes of *Sion*, while in the mean time all vary, and *Sion* is made no better then *Babylon*. No whole part can tell whither to take, and unity being gone, thereby a new sad way paved in division, to war, poverty, ruine, desolation, and by Anarchy extreme disorder and very confusion. Let them bear their rebuke whosoever they be that

that ſhould have attempted things ſo monſtrouſly exorbitant, and full of ſin as well as injuſtice; All 'tis like would have been hereby at ſtake, if not All loſt: for our Law gives and preſerves us All, and the taking away this, or changing, muſt needs then have taken away or indangered All: According to what a Lord Chief Juſtice ſaid not long ſince, The Law is the moſt common birth-right that the Subject hath for the ſafeguard and defence not only of Goods, Lands, and Revenue, but of Wife and Children, body, fame, and life, *Cook Inſtit.* 1. and *Bracton* before, *Juſtitia dat unicuique quod ſuum eſt, lib.* 1. *cap.* 4. All is the bequeſt of Juſtice, and the parent and guide thereof is the Law.

And thus my Porch or preparatory Preface ſeems well nigh finiſhed, raiſed upon ſix Pillars, as I take it, of firmneſſe enough, touching the nature, ground, riſe, growth, ſtrength, and perfection of ours and all Civill Rights. There may have been ſome miſtake in tempering the morter, diſordering the materials, or blemiſhing the whole by unskilfull handling, but the truths howſoever ſeem ſolid, and their uſe enough, chiefly in this, relating (for which they were given) to all follows, That, if this be the nature of Civill Right, and All mens beſt, and tythes have This, in any ones diſturbing them, he muſt needs diſturb what hath the common foundation, in with-holding them he with-holds what is due by as good Right, as any man claimes any thing by, he undermines that which is the ſtay and ſupport of his own houſe or wealth, and does what if the like ſhould be done to him, would leave him Nothing, becauſe He deſtroys that preſerves and gives to him and All others Every thing. If we all reſt upon one ſtrength, and this be it, imbarque in one bottom, ſtand upon one leg, and ſettle upon one and the ſame bough, let any Engliſhman take heed how he meddle with this common ſupport, leſt he infirm his own, and not be too venturous of the ſtrokes of his Axe, for fear of danger to himſelf, by cutting the bough himſelf in his greatneſſe, ſtands upon. He may think to pare about craftily, and with ſuch prudent caution and an eye to himſelf, weaken the whole, that there be

ſtrength enough left to ſupport his Own Right: But this is neither ſafe nor honeſt: Not ſafe to tamper with a common foundation, to ſprinkle fire in the next thatch, that may catch home; to bore a hole at the other end of the veſſel where a neighbours wealth lyes, thinking his own ſafe. Not honeſt, to deſigne any other mens equally Juſt and Due rights to be fed and preyed upon, to increaſe ones own heap, by taking (or with-holding) from anothers, or to wiſh the next houſe pulled down, and the inhabitants turned to the Common, that one may take as much as he needs of the ſpoil to multiply or ſtrengthen the Studds of ones own building.

That which is juſt and Right ſhalt thou do, is the rule of the holy Law, This is neither: That thy Brother may live as well as Thou, a mercifull and conſcionable rule in Iſrael; This takes away Brother *Levi*'s life, and leaves him a Beggar with others plenty. A Beggar is not uncapable of bounty, nor unfurniſhed with a hand to take what another ſhall arbitrarily give: But we are not ſo unacquainted with the holy Law of God, as not to know what heavy cenſures are there regiſtred againſt thoſe whoſe oppreſſion, covetouſneſſe, or with-holding what is due ſhall make beggars. Now *Levi* is an owner, as well as *Judah*, and by the ſame right as *Simeon* or *Benjamin*. The ſame equal univerſal all-giving, all-preſerving Rule of Right, the Sacred common law gives Him his, and others Theirs: 'Tis the pillar of the temple upon mount *Moriah*, as well as the palace upon mount *Sion*, ſtabliſhes the Church-houſe, as well as the farm or Cottage, and giving every one his own, gives the Tenth part out of the Nine, as well as the Nine whereout was taken the tenth. *Quod reſtat demonſtrandum*: But firſt it may not be unprofitable to recapitulate, and ſhew how one and the ſame thing may drive it ſelf through all the fore-going conſiderations: Take for inſtance a piece of gold, or Any thing, and ſee how thoſe truths take place, or in this manner have their ſeverall operations, Thus.

I. In abſolute conſideration it is no ones: no more property of it by God or nature, then of the moon and ſtars: 'Tis mine, thine, his, every ones, no ones.

II. Yet

II. Yet it may be owned, or elſe much of the good of it would be loſt, and the Courteous intents even of ſmiling fortune rejected by a ſullen neglect of her proffered cheap favors. But,

III. Who ſhall make this diviſion? I may not, nor another, nor another, nor any Man; Therefore 'tis fit, the Law.

IV. Which varying, yet all have agreed in ſome things, and that wherein they all agree is the beſt rule of partition and poſſeſſion in the world.

V. But if ſeverall States have fancies and wayes by themſelves, not finding what is commonly good to be beſt for them, they May, and their ſeverall Owns be, what they by their ſelect rules ſhall have choſen.

VI. And particularly in *England*, that under ſeverall forms we have agreed to make ſeverall parts of our one Rule, the Engliſh Law. So that then the gold above was

1. No ones: Yet
2. Might be ſome ones.
3. Whoſe, not Man, but the Law gives it to. The Law, I ſay
4. Univerſall in the world.
5. Particular (over-ruling) in any place.
6. With us, Ours.

Or caſt an eye upon a piece of ground

I. That is certainly no ones by God or Nature; for ſhew me the text or clear reaſon that ſays 'tis, whoſe?

II. Yet it may be incloſed, (God forbid elſe!) For, are all poſſeſſors uſurpers? or the word of God without meaning, that ſays, *Enter not into the field of the fatherleſs?* ſure, he may have a field.

Do not all mankinde know, that ſeverall men may have ſeverall rights and intereſts in the ſelf-ſame houſe and land, and yet neither deſtroy the other? Is not the intereſt of the Lord paramount conſiſtent with that of the Meſne, and his with that of the Tenant; and yet their properties and intereſt not at all confounded? King *Charles* his anſwer to the Remonſtrance touching HVLL. 26. *May*, 1642. *pag.* 5.

III. Who hath incloſed? who might? Surely, no Man. Therefore the Law.

IV. According to what *Effata*, or oracular determinations thereof? In the world by the rules of the world: 'Tis his who hath moſt need, who firſt entred, who does poſſeſs, &c.

V. In a region who hath bought, inherited, ſucceeded, obtained, by deſcent, donation, exchange, purchaſe, &c. according to the forms of that Region.

VI. In Our nation, who by the juſt, pertinent, and impartiall ſentence and application of thoſe all-giving forms with us it is ſetled upon, which alſo admits of ſome further variation: For,

1. By unqueſtioned maxime the whole originally was the Kings. He was *Directus Dominus totius*, though the *Dominium Utile* might be transferred to others. No Alodyes left amongſt us: Independency (of all and abſolute) a Monſter. All the beams that ſhine below in the lower world come firſt from the ſun, and what is in private ſtock from the publick ſtore.
2. Yet all is not his now *pleno jure*, in full poſſeſſion, and round about every ways: for he hath parted with Fees, Feefarms, Serienuties, Socages, &c. to intruſted Lords.
3. His honours have Mannors, as Chips of the great block, whereof the Maſters think they are to have ſome ſubordinate right.
4. And thoſe Mannors alſo their ſub-ſubordinate dependencies of free and copy-holders.
5. Either of which may have alſo their under-tenants, for term of years, life, will, &c
6. And theſe alſo let out the fruit to one degree lower, him that dwels in the houſe, manures the land, and immediatly, actually uſes and poſſeſſes what ſo many others have their diſtinct ſuperior rights and titles in.

Thus

Thus we ſee what may be by ſupra and ſubſtitution, how many conſiderations the ſame thing may paſſe through (each of which gives a new face,) before it ſettle any where: and how many things we muſt have conſideration of, before we can diſtinctly know what is whoſe, and what Right, and no more, any one hath in any thing. Of all which the Baſis is ſtill the Law, wherein what footing, or rather rooting TYTHES have, is our work chiefly intended, and now next to be ſet about.

CHAP.

CHAP. VII.

WHat right then have Tythes? I anſwer briefly, Manifold. It often comes to paſſe it is ſo, and that one and the ſame thing hath many firm bottoms to ſettle on: Two feet for the more ſtrength, two ſtrings to the ſame bow, though one be enough, and four better then two; for a ſurpluſage of ſtrength does no way tend to weakneſs, nor an accumulation of titles mutually weaken or deſtroy: Now at leaſt three diſtinct Rights, and each ſtrong enough are here:

I. Of Donation.
II. Poſſeſſion.
III. Preſcription.

Tythes were
1. Given.
2. Are poſſeſſed.
3. May be preſcribed for.

Nothing they ſay is more free then gift; 'tis naturall, that what I have is mine own; 'tis ſtrong if a long time I have had it, and All theſe conſpire and meet to ſettle Tythes where they are. 1. One limb of every body of the Law is, *de Donationibus*, and after many rules and cautions, the reſult is, an undoubted Right thereby. 2. What I have is mine own, it is ſo, I know it, and till the contrary be evinced, the world will judge on my behalf. 3. Continuance of poſſeſſion (juſt or unjuſt) ſhall create a Right. He that once had title to the houſe I dwel in, let him come after a hundred yeer poſſeſſion (in my ſelf and anceſtors) I dare now joyn iſſue with him,

Item acquiritur nobis dominium jure civili ex cauſa donationis. *Fleta lib. 3. cap. 2. ſect. 17. Bracton. 2. 4. 1. Cowell Inſtum. lib 2 tit. 7. ſect. 1. Hen. 8.*

him, it is Mine and not His, becauſe I have Kept it. Theſe things are known enough, and I aver they all meet here, that Tythes Were given, Are poſſeſſed, and Long enough to create preſcription; A threefold cord is not eaſily broken, and here is that complication of 1. Donation ſufficient. 2. Poſſeſſion undoubted. 3. And Preſcription for time over and over. To which adde, that each of theſe pillars hath alſo another ſtrong ſtay by, to ſupport the weight laid on it: Donation bettered by Confirmation: Poſſeſſion ſecured by him in whoſe right the poſſeſſion is; *Dedimus Deo* was the form of grant, and is the ground of claim: Preſcription is lengthened through more then half twenty times over ſo much as would ſimply ſerve the turn: And if theſe things be ſo, and they are, and all, and known, by the Law, be this ſuppoſed, and me thinks we may ſing *victoria* almoſt already.

But they remain to be proved; by Gods bleſſing they ſhall: There is neither of them but lies clear in view to thoſe are acquainted in thoſe regions of knowledge (whether of Books or Experience) where a likely information of any of them is to be looked for; and I ſhall yet add one thing more as a Coronis at top, the opinion of the Learned in their own profeſſion. One ſingle ſelf may have been deceived not inexcuſably; 'Tis hard for a ſtander by to be acquainted in all the rooms of a neighbors houſe; ſome ſparks of true light have ſometimes (by their not right uſe) but led private men to Errour; But as witneſſes produced go for proof uſually, and their agreement ſtrengthens their teſtimony, and a conſpiration of them profeſſing to know, is the faireſt of all preſumptions againſt miſtake.

If therefore the Lawyers themſelves have apprehended thus with me, if they have combined and conjoyned to ſay ſo, if there have bin that combination and conſent that they All have ſaid ſo, and till within theſe few years no One would have been Fee'd to the contrary; nor, if he underſtands himſelf, will yet: from All theſe I ſhall not doubt to inferr a ſtrength of preſumption, that what men have ſaid, the learned have ſaid, the Lawyers have ſaid, and All of them both have and doe, (no one to be hired to the contrary, whereas

they come in *gratis* on the other part,) hath much more then likelihood that it may be true which they aver, and for their aſſertion ſake. From whence may we expect Credibility, if not from the voice of men, of All men, and they agreeing, and the Seers themſelves giving their vote? *In ore duorum vel trium ſtabit omne verbum*, ſays the Divine Law, 2 *Cor.* 13. 1. *Num.* 35. 30. *Deut.* 17. 6. *cap.* 19. 15. *Mat.* 18. 16. *John* 8. 17. *Heb.* 10. 28. How much more, *In aſſenſu & conſenſu omnium & ſingulorum?* That is a bad caſe which admits no plea, that no one will be hired to undertake, or can colour for, that neither hath ſubſtance nor ſhew. If therefore the grave and learned Judges (the Oracles of the Law) have gone this way, if the other reverend Sages (I comprehend all graduated profeſſors) take in along with them, if it be the painfull knowledg of the Student, the coſtly knowledg of the Country-man, the experienced knowledg of moſt men, the generall allowance of All men; Doubtleſs that muſt be ſo which one ſays, and another ſays, and a third ſays, and a fourth ſays, and every body ſays is ſo; and moſt likely when the profeſſing too, know, joyn in, and ſay ſo likewiſe.

We have made room enough, a large field to expatiate in: God be our guide, as Truth our aim, and ſucceſs but as the righteouſneſs of our Cauſe ſhall deſerve for us: The firſt part of the plea was Donation: Which, becauſe it is like to be large, the faſt Corner ſtone whereupon to ſettle the chiefeſt of what follows, ſomething would be ſaid what it is, who may give, what, to whom, &c. It may not be ſafe to go on of our own heads. Here therefore again for the help of the Sages,

Donation then (ſays (1) *Bracton*) is a certain Inſtitution that proceeds from meer bounty and will, no law forcing, to transferr a thing to another. Or, To give, (ſays (2) *Fleta*)

(1) Eſt autem Donatio quædam inſtitutio quæ ex mera liberalitate, & voluntate, nullo jure cogente, procedit, ut rem transferat ad alium. *De acquir. rerum dom. cap.* 2. *fol.* 2. *fol.* 11.

(2) Dare autem eſt rem accipientis facere cum effectu. *Flet. lib.* 3. *cap.* 3. *fol.* 1.

is

is to make any thing his that receives it. But (3) *Cuiacius* lately thinks he hath hit it better then both, making it Properly the free alienation of any thing, with this minde that it ſhall not revert to the Donor. The firſt of theſe may leave a rub in the way to hinder that we would by no means oppoſe in all this Tract, the free progreſs of that opinion, that Tythes are due *Jure Divino*: As if they be, how can we ſay they were Given in the ſenſe there, *ex mera liberalitate, nullo jure cogente*: Or if the (4) Divine law did inforce, then how are they in this ſenſe clearly given? I anſwer, well enough; as well as a man may give that which God had ſaid before he ſhould give; or do that freely, which the ſcripture yet irreverſibly commands he ſhould do: Give an Alms to a poor man, ſays the Scripture: which man does of himſelf, (the rather for that command) freely, and yet the divine Law was in force, and obeyed, to part with that a man was not bound to part with.

(3) Et eſt propriè donatio alienatio rei quæ liberalitatis causa fit, hac mente ut nullo casu recipiatur. *Paratit. ad F. de donationibus.*

(4) Donari videtur quod nullo jure cogente conceditur. *F. de diverſis reg. ll.* 81.

Give the ſeventh part of thy time, ſays the fourth Commandment; yet 'twas a voluntary (1) Act of our State, that in obedience to that command, but freely in it ſelf, ſet aſide this part here with us; They might, or they might not, elſe

(1) Quarto decimo ſtatuitur loco, ut Dominicus d es legitima ve-

neratione à cunctis celebretur, ſint; Divino tantum cultui dedicatus; —— Omiſſiq; exterioribus negotiis, atque ſecularium conventibus, atque itineribus; niſi inexcuſabilis quælibet cauſa urgeat; religioſæ conversationi ac benè vivendi normulam de ſacræ ſcripturæ eloquiis ſubjectis famulis prædicando inſinuent. Sed & hoc quoque decernitur quod eo die ſive per alias feſtivitates majores, populus per Sacerdotes Dei ad eccleſiam ſæpiùs invitatus, ad audiendum verbum Dei conveniat, miſſarumque ſacramentis, ac doctrinæ ſermonibus frequentiùs adſit. *Concil. Cloveſ. an Chr.* 747. *cap.* 14 *apud D. Spelman. concil. Britan. pag.* 249 Die dominico nihil aliud agendum eſt, niſi Deo vacandum, in hymnis & pſalmis & canticis ſpiritalibus. *Excerpt. Egbert.* 104. *circa an. Chr.* 750. *ib pag.* 268. *And for the forbearing of working, hunting, marcating, impleading, &c. are other ſalter Laws: How the maſter ſhould be puniſhed, how the ſervant, &c. which by degrees brought off men from their accuſtomed common employments,* vid. L. Inæ Regni 3. circa ann 710. in Lambard. Archaion. pa. 1. & Spelm. Concil. p 183. Concil. Bergamſted. ad ann. 697. can. 10, 11, 12 ib. pag. 195. Excerp. Egbert. 36. pag. 262. Fœdus Edwardi & Gurharin regum. cap. 7 & 9. apud Lambard. Arch. pag. 43. *agreeing with thoſe under the title of*, Leges Eccleſ. ab Alured. & Guth. R. L. latæ cap 10, 11. apud Spelm. pag. 377. L. Eccleſiaſt. Æthelſtani R. circa an. 928 cap. 6. ib. pag. 400. Conſtit. Odonis circa ann 943. cap. 9. ib. pag. 417. Leg. Eccleſ. Edgari R. ad an 967. cap. 5. ib. pag. 445. & cap. 6. pag. 446. Canones dati ſub Edgar. cap. 19. ib. pag. 410. Concil. Ænham. circa ann. 1009. K. 30. L. Eccleſ. Canuti R. circa ann. 1032. cap. 14, 15. apud Lambard. pag. 103. L. Eccleſ. Canuti, cap 14 & Capitulare inveſti temporis & authoris: cap. 14. in Spelman. pag. 600.

All which things and the re-inforcement of ſo many, do ſhew how hardly men were drawn off their own ways: what need the Commandment of God hath of the abetting law of man that it may take place; and how clearly and fully that may be after given by man, which God appointed to be given: And thus, 'tis like, is that alone, which gave the due Sabbath day to God here with us.

they had not been free: but now, beſides the fourth Command: it is ſecondly due to humane Juſtice (appointing it,) to have the Sabbath ſanctified: So, Give the Lord the Tenth with a good eye, is interpreted to us the heavenly Oracle; yet when the believers came to obey, they did it freely, which they might not have done: *Nullo jure cogente*, that is, none of the ſame ſort, none on the ſame floor, no humane lower poſitive law having ſet aſide any thing, or commanded, though the higher Divine law had bound it to be more then expedient, which yet might not have been obeyed. The ſumme is, God may have ſaid, the Tenth ſhould be paid, Man have not obeyed; but he did, and gave by the perſwaſive influence of Divine command, that which was his own, and he was bound by no humane Law before to have given: and ſo here is a a commanded, obeyed, and yet free and voluntary Donation.

But, to go on, Donation, which was as before, is divided into (1) free, abſolute, illimited, and meerly voluntary, or *ſub modo*, under limitation or Condition, as, *Do ut des*, or *Do ut faciat*, *&c.* Now although this be in it ſelf more avoidable, as letting out into more ways of evaſion, yet if the thing conditioned be of evident neceſſity, as, I give that thou ſhouldſt preſerve this man from ſtarving, to do ſuch a thing neceſſary in publick, or for the ſervice of God, which is moſt neceſſary, or the like; Now in this caſe the neceſsity of performance mounts up with the needfulneſs of the thing depending, for it is more expedient that ſuch neceſſary things in themſelves ſhould not be left undone, then any ones ſimple, declared, ſingle will thrung in to take place, which yet in Juſtice ought, though in this neceſsity (comparatively) it ought not.

(1) Donationum alia ſimplex & pura, *ſc.* quæ nullo jure civili vel naturali cogente, nullo pretio, metu, vel vi interveniente, ex mera & gratuita liberalitate donantis, procedit: Item alia ſit ob cauſam, vbi *ſc.* cauſa interponitur, ut aliquid fiat vel non fiat, &c. Et hoc genus donationis impropriè dicitur donatio: *Bract. lib. 2. cap. 5. ſect 3.*

(2) Dare autem non poterunt illi, qui generalem rerum ſuarũ non habent adminiſtrationem, ſicut ſunt minores, incarcerati, ſurdi & muti, & naturaliter furioſi, &c. *Fleta lib. 3. cap. 3. ſect. 10.*

Further, who may give? and 'tis anſwered, All, that are under no prohibition: As, are (2) thoſe that have no

power

power of themſelves, as Pupils, who are like to make their condition (3) worſe, (though they may contract to benefit, though not to loſs;) and for this reaſon the Church alſo, (4) which is alwayes as a Minor: likewiſe the deaf and dumb, &c. nor the (5) perſon of a Church, becauſe he is in poſſeſſion, but in right of his Church, and ſo hath nothing to give, for what he hath was given *Deo & Eccleſiæ*, who are the proprietaries, he but the uſu-fructuary, and ſo cannot diſpoſe of anothers.

(3) *Vid. Bract. de acquirend. rerum dom. fol.* 12.

(4) Vice autem minoris fungitur Eccleſia Dei: *id. ib. & fo.* 32. *& Cook Inſtit.* 1. *fol* 34 *ſect.* 644. *Agreeing with the like favour of the Civill law.*

(5) Idem dicendum erit in rectoribus Eccleſiarum qui nihil poſſident niſi nomine Eccleſiæ ſuæ, unde nihil dare poſſunt, alienare vel permutare, niſi de conſenſu epiſcopi vel patroni, niſi inde melioretur conditio Eccleſiæ: Si autem deterioretur non valet, quia ſit eis donatio ſecundario, ſicut maximè patet in ipſa dedicatione, & etiam poſt dedicationem, Do Deo & Eccleſiæ tali, &c *Bracton. ubi ſupra.*

For, to whom; (1) To any one: Bond or free, Minor, or of full age, Jew or Chriſtian, But not to a wife, not (2) to the Church in Mort-maine, except by licenſe, (for every thing is to be kept within its due bounds; and a proportionable equality is like to be the Mother of longeſt duration: A monſtrous growth tends to the ſooner ruine, of it ſelf or the whole; and therefore in its favour it is provided, the Church may not ſpread too big, leſt *pondere preſſa ſuo*, it fall with its own unweildineſs.

(1) *Flet. lib.* 3. *c.* 4. *ſect.* 1. *pag.* 179. *Bracton. ubi ſupra.*

(2) Quibus dare inhibetur: *Fleta lib. eod cap.* 5. *& Magn. Chart. c.* 36.

Laſtly, What may be given? what, is Corporall or in viſible, a poſſeſſion or a right, a whole or a part, but not what is (3) no ones, as is every thing ſacred: This is ſuppoſed out of every ones reach; 'tis no bodies (on earth) and ſo none can lay (4) hand of it to give it forth to another.

(3) Nullius autem ſunt res ſacræ & religioſæ & ſanctæ. Quod enim divini juris eſt, id nullius in bonis eſt. *Inſtit.* 2. *de rerum diviſione. ſect* 7. *F. lib.* 1. *tit.* 8. *lib* 2. *ſect. ſacra. Bracton.*

lib. 1. *cap.* 12. *ſect.* 8. Extra patrimonium verò res ſacræ & Communes: *Flet. lib.* 3. *cap.* 1. *ſect.* 3.

(4) Item donari non poterit res quæ poſſideri non poteſt, ſicut res ſacra vel religioſa vel quaſi, quæ eſt res fiſci: *Bracton ſol.* 14

CHAP.

CHAP. VIII.

THeſe things may ſeem needfull to have been pre-conſidered of gifts, to the intent what follows may not ſeem to have croſſed the generall Doctrine. Among particular inſtances whereof to our purpoſe, begin firſt with the head, that which was to *Auguſtine*, or in that *Auguſtines* time whom ſome love to call the Apoſtle of the Engliſh men: who found moſt of this Engliſh part of the Iſle as Barbarous, as the whole is like to be when covetous men may ſave this expence. We cenſure not what the grace or power of God can do, but in likelyhood what he will. Miracles are not to be multiplyed without cauſe, nor he to be put out of his ordinary courſe of By-cauſes; according to which we are likewiſe to expect and judge that will be, in humane probability is by them Like to be. He then found here the land dark as *Sodome*, the ſouls of men over-ſpread with Atheiſm and Idolatry, and no truth or knowledg of God, which he divulged ſucceſsfully, and took care, (or the bleſſed Providence of God brought to paſs) that the Vine and the Elm were planted and have grown comfortably together, Chriſtian Religion and this acknowledged good ſupport thereof being by one and the ſame Hand here planted and rooted; and as they were born, and have lived, if any be, God grant as Twins they be not taken away together alſo.

A little before the year after Chriſt, 600.

But whence does this appear? we ſhould gladly have taken it up from *Bede* or *Malmsbury*, or any other creditable ſtory, but we have it from what was more authentick, the moſt ſubſtantiall credit of a ſolemn law: By all mens leave, This

ſhall

ſhall be more creditable then any private Mans words; what is planted and ſhining in any publick paſt law, being leſs ſubject to forgery and ſubornation then any ſingle ſimple mans Teſtimony whatſoever. In King *Edward* the Confeſſors Laws then thus we finde.

Of all (1) Corn the Tenth ſheaf is due unto God, and ſo to be paid. And if any keep Mares, the Tenth Colt; but if he have but one or two, ſo many pence. So if any keep kine, the Tenth Calf; or if one or two, ſo many half pence. He that makes Cheeſes, the Tenth; or if not, the Tenth days milk. In like manner, Lamb, Wooll, Sheep, Butter, Pigs, of all the Tenth. The tenth alſo of the commodity of Bees, and of Wood, Medow, Waters, Mils, Parks, Ponds, &c. the Tenth to him that gives both Nine and the Tenth. He that detaineth, let him be forced by publick Juſtice, (ſo I interpret that called there the Kings and the Biſhops, becauſe their powers were then repreſented together to confirm both ways, Civilly and Eccleſiaſtically:) for ſo preached and taught bleſſed *Auguſtine*, and ſo was granted by the King, the Lords, and the People.

(1) De omni annona, &c. *The Latin is after tranſcribed, pa. 79.*

Thus far that ſolemn Law, the authority of whoſe teſtimony we ſhall (2) hereafter more fully ſet forth, when, for the ſake thereof, we ſhall ſhew the whole collection to be one of the ancienteſt pieces of the Common law, ſo often called for by the people, confirmed by the King, and entred into the Coronation Oath, &c. In the mean while, by all the credit this teſtimony can give, *Auguſtine* preached Tythes, the People believed, the King and Parliament granted; for what can be leſs meant by, *Conceſſa ſunt à Rege, Baronibus, & Populo?* and under the ſpecification of Colt, Lambs, Fleece, Corn, Milk, Honey, and moſt particulars claimed.

(2) Vid. pa 90, 91, &c.

Let no man take advantage, by thinking me ſo unadviſed as to ſuppoſe Parliaments ſo early under that name, which I know came in long after, and whatſoever ſhould carry that title applyed in ſtrictneſs to any thing beyond a good way in the Norman times, I ſhould ſuſpect it for Counterfeit: but that Publick meeting which had the power and vote of the Land, conſiſting of the Head and its ſubordinate Members, call

call it Senate, Gemote, Court, Councell, or whatsoever else, the Collection and Congregation of the Land granted this.

Object. *I know well what may be said to the contrary: as that* Bede *who lived soon after, and reports that story of Conversion at large, and is most authentick for those times and the following, sayes nothing of any such thing: not when he had just occasion so to doe: for he speaks both of* Augustines *entertainment* (a few lands) *and his sending back to Rome about Church-maintenance in generall, and how it should be divided, but not a word of* TYTHES.

Vid. Hist. Eccles. lib. 1. cap. 26. in fin. & cap. 27. Interog. 1.

Whereunto I answer, True this: but, what then?

Answ. 1. Negative testimonies are the weakest of proofs, upon the matter no proof at all; as silent witnesses that say nothing.

If *Bede* had said any thing we should have much listened, and that whether he had spoke against or for us; but saying nothing he is but a mute, and no more to be regarded strictly, then he that is called, comes in, and is silent.

2. As to his yet mentioning other things neer, the time of both was but when yet things were raw: when he had not preached, nor the people beleeved, or in reward setled what they may have afterwards. Time does much, nothing is begun and perfected at once; the story is plain, the questions sent to Rome, of which we have account, were, the first return of *Austines* success: and petition for supply of Councel thence, and so might prevent what was after done, and it be too soon there to mention what was not till after, granted.

3. And the first of those questions was onely of oblations, as a part, and whereof might be the greatest doubt, not exclusive of other things.

4. Neither were those oblations all that was, positively: for *Austine* had then other things, & so that expression not so full and comprehensive as to infer any thing from it as compleat. For the King had given him (1) good intertainment at first,

1) Dedit ergo eis mansionem in Civitate Dorovernensi (qua imperii sui totius erat Metropolis) dicandi non abstulit. Eisque ut promiserat, cum administratione victus temporalis licentiam quoque praebuit. *cap.* 25.

no

(no doubt continued) and (2) afterward, befitting his degree, as one to whom he had intrusted his soul, another place (3) I think his own palace in Canterbury, with needful accommodations of severall sorts. What those *Necessaria in diversis speciebus possessiones*, were, I know not: I beleeve they could not be comprehended within the oblations in the question mentioned, and so that not comprehensive of all was allowed.

(2) Nec distulit quin ipsis suis doctor bus locum sedis eorum gradui congruum, in Dorovernia Metropoli sua donaret, simul & necessarias in diversis speciebus possessiones conferret, *id. cap. 26.*

(3) Donatusque à Regeuebe regia Cantuaria in Episcopalem sedem, & aula Regia in Ecclesiam Cathedralem Christo erigendam: sic ut æmulari Rex videtur quod ab Imperatore Constantino Magno factum perhibent. *Vita sancti Augustf. apud D. Spelman. Concil. p. 92.*

5. 'Tis yet liker they were Tythes, *in specie*, for King *Alured* seems to have borrowed such a law from this King. My reason is, because when after he composed a body, with a preface as from *Leviticus*, wherof one branch is for Tythes, he says of the whole, that he thought it (4) too great presumption for him to attempt any such thing first anew, and therefore he modestly borrowed, with the advice of his Councell, from his Ancestors *Ina*, *Offa*, and this *Ethelbert*, *Qui primus Anglorum sacro tinctus est Baptismate*, the first of Christians. Now for *Ina* we are sure enough of him, by the laws extant, he had none such; if *Offa* had, then either this was that *Alfred* related to, or it was not. If it were, then has *Offa*'s Law much confirmation in this of *Alfred*: If it were not, there could be no other to relate to, but this of *Ethelbert*.

(4) Has ego Aluredus Rex sanctiones in unum Collegi, atque eadem literis mandavi, quarum bonam certè partem majores nostri Regiosè coluerunt, multa etiam &c. Ac quoniam temeritatis videatur ex suis ipsius decretis quenquam plura literarum monumentis consignare, tum etiam incertum sit qualem apud posteros habitura sint fidem quæ nos magni facimus, quæcunque in Actis Inæ gentilis Mei, Offæ Merciorum regis, vel Ethelberti, (qui primus Anglorum sacro tinctus est baptismate) observatu digna deprehendi, ea collegi omnia, reliqua planè omisi: *Lamb. Arch. p. 22. Spelm. Concil. p. 363.*

6. Yet more likely, for that before Any other Act passed (this of *Offa* or any other, that we read of) here were tythes said to be paid: For (5) *Boniface* Archbishop of *Mentz*, blames the then Clergy here for neglecting their Cures, yet *Lac & lanam ovium Christi oblationibus cotidianis ac decimis fidelium accipiunt*. Now he lived about the year 745. and before *Offa*, or any other Act we read of but that of *Ethelbert*.

(5) *In an Epistle to Cuthbert Archbishop of Canterbury*, de corrigendis vitiis Anglorum, *about the year 745. vid. pag. 240.*

This ſure: we have here a plain affirmation, in a clear law, and ſo not raſhly to be left for any private conjectures, or blinde preſumptions, and that in ſuch a place, that, ſave in *Domus-Dei* book, or a few other, we might not look for more authentick from the tendryes of that age. Some credit uſes to be given to places; we leaſt ſuſpect forgery in a Church-window, or Palace-Inſcription; and an hiſtorical truth ſhall never ſhine with that evidence, light and credibility to my ſoul from *Tacitus* or *Tranquillus*, as caſually let fall or ingraven in the face of a Roman-law, or publikly inſcribed in the commanding Pandects or Novells. Eſpecially ſith, here was ſaid to be a conſent of King and people; which laſt if they had not conſented, there would have bin worke enough: every ſimple man would have been a ſingle accuſer, & every neighbour at hand a ready witneſs: Kings Acts may have many eyes upon them; but to father any thing upon the people undone or untrue, were to create a Commonalty of enemies at once, every one with his accuſation ready to clamor loud enough againſt the forgery.

We will ſay then, *Auſtine* preached tythes; and the King, his Barons, and people beleeved, and obeyed and conferred them: And obſerve thereon, their date began with the Bibles entertainment; tything and preaching went together at the firſt, and from the firſt and always. 'Tis uncourteous to part old friends, hard to ſlope the skin from the fleſh, dangerous what hath long gone and grown together. Accuſtomed food proves lightly wholſomeſt, they that change for better often fall ſick of their remedy, and to be weaned from that an aged man hath been accuſtomed to, and found wholeſome from infancy, cannot but create much danger to the body by change, if not utter diſſolution. Which 'tis eaſie to apply here; and ſith, miniſter to Chriſt, and live by Tythes, are ſo intwined together among us as they are, and alwayes have been, God grant the event extend not beyond good mens deſires, intents, doubts, or fears, that the whole frame of the long continued Church, ſink and fayle, upon ſtirring (if they ſhould be ſtirred) this united and neer co-incorporate pillar

that

that hath hitherto outwardly ſuſtained it. If it be charge or trouble, it may be born by the experience of a thouſand years: If men love their eaſe now, ſo they did heretofore: If they are now wiſe, they were not then altogether deſtitute of wiſdom: Lay together, that the clear polity of the Old-Teſtament went thus all along, The generall practiſe of the New-Teſtament hath been according; Here with us ever ſince the bright ſhine of the Goſpel diſpelled heatheniſh darkneſs, and from the very day-break of Chriſtianity to this inſtant, it hath been judged beſt, and is; what new plots would do is uncertain, and may have the accompanying danger of experiment upon ſick or ſound bodies, to diſturb what is ſtrong, or ruine what is decaying.

CHAP. IX.

BUt to proceed: and in what follows we may perhaps light on more clearneſs and particularity: At the darkneſs of this remote diſtance we may not look to ſee every Mote, but as things draw nearer, ſo ſhall we ſee clearer. This of *Auguſtines* time may have been only in *Kent*, for there he ſetled and Chiefly lived; the next will look to the cold Climate, and in the next Miſſive, (which was about 200 years after,) ſee what took effect more Northernly: *ſc.* In an Embaſſage directed to *Offa* King of *Mercenland*, and *Ælfwald* K. of *Northumberland* with their Archbiſhops, where the Commiſſioners were *Gregory* biſhop of *Oſtia*, *Theophylact* of *Todi* (in *Italy* both) and they came firſt to *Offa*, (it ſeems becauſe neareſt) and he, (becauſe the buſineſs might concern him) ſent and called to councel *Kenwolfe*, (or *Kynewlfe*) King of the Weſt-Saxons. There the work was diſtributed: *Theophylact* ſtays about *Mercenland* and *Wales*; *Gregory* and his aſſiſtants go to *Ælfwald* (or *Oſward* King of *Northumberland* and *Eanbal* his Arch-biſhop, where a Parliament was ſummoned, or that which had the nature thereof, a meeting of both States, (*Convenerunt omnes principes regionis tàm Eccleſiaſtici quàm ſeculares,*) and the 17 of their deciſions this; *Decimum Septimum caput:* (1) *de decimis dandis ſicut in lege ſcriptum eſt:* of ſetling tythes according to the Law. (2) The tenth part of all thy fruit, or thy firſt fruits thou ſhalt bring into the houſe of the Lord. And again by the prophet, Bring all the tythes into my barn, that there may be meat in my houſe, and prove me in this, if I will not open the windows of Heaven, and pour out bleſſing abundantly:

The account of thoſe meetings in thoſe and more circumſtances is returned in an Epiſtle to Rome about the year 786. when the things were done by one of the Commiſſioners, and publiſhed by Illyricus in his Centuries Vid. Cent. 8. cap 9. col. 316. edit. 1624.

(1) *Ib col.* 320.

(2) Decimam partem ex omnibus frugibus tuis, ſeu primitiis deferas in domum Domini Dei tui. Rurſum per prophetam: Adferte inquit, omnem decimam, &c. *ib.*

abundantly: and I will rebuke the Devourer for your ſakes that deſtroys the fruit of your land, and there ſhall not be a vine barren in your field; the Lord ſaith it. As the wiſe man ſpeakes, no man can give his own alms of his own, unleſs he firſt ſeparate to the Lord what from the beginning he hath required to be his. And hence often it cometh that he that will not give the tenth, is reduced to the tenth. Whence with all earneſtneſs we command, that All ſtudy to give the tenth of all they poſſeſs, becauſe it is the Lords peculiar, (or reſerve) and live of the nine, and be bountiful as they can.

This was propoſed in the Aſſembly, and beſides the King and Clergy, confirmed with the aſſent and ſubcription of all the Elders, Captains, and people of the land; (1) conſenting the Judges, Peers, and Nobles: And ſo to King *Offa* and his Elders (or Senators, or Councellors, *Senatores* is the word) who did the like, his Princes and Clergy ſetting their markes: Brorda *Dux ſigno ſanctæ crucis ſubſcripſi.* Faxwaldus *Dux ſubſcripſi.* Beroaldus *Dux ſubſcripſi.* Othbaldus *Dux ſub, cripſi:* with a croſs as the manner then was in their ſerious and religious confirmations.

(1) His quoque ſaluberrimis admonitionibus, Presbyteri, Diaconi Eccleſiarum, & Abbates Monaſteriorum, Iudices, Optimates, & Nobiles uno opere, uno ore conſentimus & ſubſcripſimus. *Ib.*

A moſt obſervable Law, ſays Mr. *Selden*, if it be genuine, (as why ſhould it not?) being made by both States, and of two Kingdoms: It is not like *Illyricus* forged it, or would venture it to light, without ſome Authentick authority, conſidering who he was; and what he is there a doing: the phraſe, ſtile, and forme ſpeake much the tone of that age: Our (2) Sir *Henry Spelman* followes him in the ſubſtance, though not in the circumſtance, giving it due place in our Councels ſince publiſhed; and unleſs we will queſtion every thing, why ſhould we this? He hath added the name of the place, *Concilium Calchuthenſe*, that is either *Chalchuth*, or *Calchuth*, or *Celchyth*, or *Cealtide*: for theſe ſeveral variations I find; which *Camden* places in *Northumberland*, though he had rather finde it in the higher Climate of ſome part of *Mercia*: I ſhould ſeek for it between *York* and *Durham*.

(2) *Vid. Concil. Brit. pa.* 291. *& pag.* 298.

CHAP.

CHAP. X.

ONe thing more is obſervable, that although *Kenulph* King of *Weſt-Saxon-rie* were preſent at the firſt delivery of the Letters, we hear no more of him afterwards, the approbations and ſubſcriptions having onely the countenance of the more Northern parts; for Tythes may not yet have been generally ſetled, ſave in *Kent*, by *Ethelbert*; and *Mercia* and Northwards, as but now; which yet was after done ere long, and namely by that *Celebris donatio Ethelwlphi*, ſo much ſpoken of. This clapped the ſevere and abſolute injunction upon all the Kingdom, (having power ſo to do, as the other had not) infolding every part that was under his power, (as all was) under the ſame conſtraint, ſo that now to Tythe was as generall as to reap, and by a Catholick command from ſea to ſea, and from the flood to this worlds end, Gods Miniſters had now an appointed and ſetled livelihood whereſoever man had.

For the better underſtanding whereof, this of ſtory would be taken in by the way: That (1) *Egbert*, this King *Ethelwlphs* father had gathered together (no longer before) the diſperſed pieces of petty-Royalties here, into one greater Monarchy, and bruiſing and battering the Coronets of ſeven (orthe remainder of ſeven) leſſer Kings, had caſt them all into one greater Crown, moulded for his own head, and left the power to this his ſon, under the Title of Monarch of the Nation, or King of England. A fit time to do any great work, and make or perfect ſuch a change, as ſhould be Catholick and uniform; not now, This and That, but

(1) Cognoſtendum igitur eſt, quòd eodem hic titulo utitur *Ethelwulphus* Rex, quo Egbertus pater ſuus bellicoſiſſimus acquievit, cum univerſam Heptarchiã ſuæ ſubjugaſſet ditioni: *and how, Vid. Spelm. Concil. pag.* 351, 352. *Speed. Chron. lib. 7. chap.* 31. *Polyd Virgil. li. 5. pag* 89, 90.

but one and the ſame throughout the Nation. Before him, it was King, (or Kings) of *Britain* till the *Cæſars* came: Then, *Aulus Plancius*, *Oſtorius*, or others, Lieutenants of *Britain*: after, the fell Saxons gave denomination to their ſeverall ſhares of a conquered Heptarchy and we had South, Eaſt and Weſt-Saxons, beſides *Kent*, *Eaſt-Angles*, *Mercia*, and *Northumberland*: But this *Egbert* maſtered All, brake (1) the image of *Cadwaline* laſt King but one of the *Britains* triumphantly placed over *Ludgate*, cruſhed the power, and obliterated the partiall names of his own Countrymen, and made all ſtoop to his ſole Command, under the new name of The Kingdom of *England*, (whereof he was ſole Monarch) which ever ſince through ages hath to this preſent remained.

(1) *Serv. Chron. in the life of the Egbrichts, pag. 99. & Speed. hiſt. pr. fol. 6.*

Theſe things prepared, as was ſaid, for the uniformity of any work to have its extent and operation upon All, and being remembred, makes way for that Donation, which heed, is Here given under that name: Other before may have had the ſubſtance, but they had not the proper term, this both name and thing, under the title of, *Celebris illa Donatio Ethelwlphi*. Which what it was, take information firſt from him that had a great hand in preſerving the Common-law from the ſpoiles of the Conqueſt, and lived neer thoſe times, *Ingulphus*.

The moſt noble King of the Weſt-Saxons (ſaith he) *Ethelwulph*, when he had returned from Rome viſiting, with his ſon *Alfred*, the habitations of *Peter* and *Paul*, &c. by the willing aſſent of all his Prelates and chiefes, that under him were over all the Provinces of *England*, had then firſt indowed All the Engliſh-Church (for ſome peices had been before, but there wanted a Soveraign power, or the union of the parts

Inclytus Rex Weſtſaxonum Ethelwulphus, cum de Roma ut limina Apoſtolorum Petri & Pauli, ac ſanctiſſimum ipſum Leonem multa devotione, una cum juniore filio ſuo Alfredo peregrè viſitaverat, noviter revertiſſet, omnium prælatorum ac principium ſuorum, qui ſub ipſo variis provinciis totius Angliæ præerant, gratuito conſenſu, tunc primo cum decimis omnium terrarum, ac bonorum aliorum ſive catallorum univerſam dotaverat Eccleſiam Anglicanam per ſuum Regium Chirographum confectum inde in hunc modum.

to

Regnante domino noſtro in perpetuum, dum in noſtr. is temporibus, per bellorum incendia, & direptiones opum noſtrarum, nec non & vaſtantium crudeliſſimas hoſtium deprædationes, barbararum paganarumque nationum multiplices tribulationes ad affligendum nos pro peccatis noſtris uſque ad internecionem, tempota cernimus incumbere periculoſa.

Quamobrem ego Ethelvulphus Rex Weſtſaxonum cum conſilio Epiſcoporum ac principum meorum conſilium ſalubre ac uniforme remedium affirmantes conſenſimus, ut aliquam portionem terrarum hæreditariam, antea poſſidentibus omnibus gradibus, ſive famulis & famulabus Dei Deo ſervientibus, ſive laicis miſeris ſemper decimam manſionem, ubi minimum ſit, tum decimam partem omnium bonorum in libertatem perpetuam donari ſanctæ Eccleſiæ dijudicavi, ut ſit tuta & munita ab omnibus ſecularibus ſervitutibus, imo regalibus tributis majoribus & minoribus, ſive tavationibus quæ nos dicimus Winterden, ſitque libera omnium rerum, pro remiſsione animarum, & peccatorum noſtrorum ad ſerviendum Deo ſoli, ſine expeditione & pontis extructione, & arcis munitione, ut eo diligentius pro nobis ad Deum ſine ceſſatione preces fundant, quo eorum ſervitutem in aliqua parte levigamus. *Ingulph.*

to extend this good work over All) with the Tythes of All lands (mark the extent again) and other goods or cattles, which he did by his Royal Patent, thus:

Our Lord Chriſt raigning, but we toſſed up and down &c. wherefore I *Ethelwlph* King of the Weſt-Saxons with the advice of my Biſhops and Princes, reſolving on ſome wholſome remedy, have agreed that ſome portion of my lands formerly inheritable by whoſoever, ſhould now as to the tenth of the whole be ſet aſide (for this I conceive to be the ſence, the words ſcarce affoording any, but by comparing other accounts, this ſeems the thing meant) for the ſervants of God, and a like tenth part of my goods for the Church; ſo free that it yeeld no ſecular ſervice, nor tribute (more nor leſs) nor *Winterdene* (or *Witterdene*, a kind of imposition) but that it be devoted to Gods ſervice alone, that the poſſeſſors may pray ſo much the more diligently for us, as they have fewer occaſions to diſturb them. This was done at *Wincheſter* in S. *Peter*'s-Church, *Anno Dom.* 855. preſent and ſubſcribing all the Arch-Biſhops, and Biſhops of England, and *Beorred* King of *Mercland*, *Edmund* King of the *Eaſt-Angles*, and a numberleſs number of Abbats, Abbeſſes, Dukes, Earls, and Chiefs of the Land, and other approving beleevers: And the (1) Charter was offred upon the Altar, and there received for more religious confirmation.

(1) Rex verò Ethelvulphus pro firmitate ampliore obtulit hanc chartelam ſcriptam ſuper Altare ſanctì Petri Apoſtoli: & Epiſcopi pro fide Dei illam acceperunt, & per omnes Eccleſias poſtcà tranſmiſerunt in ſuis parochiis publicandã. *Ingulph. ubi ſup. fol. 6.*

This

This I take to be the ſence of what was there done: (2) *Matthew Weſtminſter*, (3) *William Malmeſbury*, *Ethelward*, and others give ſeveral accounts, but tending this way, and ſo great conſent is in ſubſtance, though variation in expreſſion, that no one can doubt ſome ſuch thing was done, men ſo much varying yet agreeing to report. No one undertakes to make good all of every thing he makes uſe of, and here was interſperſion of Abbots and Abeſſes, offering at the altar, with Saints and Angels intereſſed and the Virgine *Mary*: but ſuch commixtures do, we know, no more invalid the ſtrength is adjoyning good and ſound, then the like in *Magna Charta*, or the moſt of all ancient Parliaments, or ſome diſperſed ſpots in the Common Law. He that ſhall once give his buſie humor leave to work, and queſtion things ſufficiently done by ſome infirming circumſtances, will ſoon leave little enough of approved firmneſs (by the ſame ſtrict rule of eſtimation) anywhere, no not of thoſe foundations whereon are raiſed and ſtands the ſtability of the chief worldly things we here injoy. This is ſure, the grant was made, and let the injoyed benefit ſpeake the fruit to our time, the providing for a helpleſs Church, and it ſhould ſeem ſo firm it needed not be again, nor was after; for 'tis obſerveable the ſtile henceforth changed, and men do now no more Grant, but Confirm; nor had they need Part with ſo much as Aſſure, nor voluntarily Give, but yeeld to Pay.

(2) *Ad ann.* 855.
(3) *Geſt. Reg. Ang. lib.* 2. *cap.* 2.

Which we ſhall obſerve as we go along: In the mean while as to the doubtful words, various hath been the conſtruction, and learned reviſors have not all found the ſame thing in them.

(1) *Jo. Stow* takes it to be a parcel of land: (2) Doctor *Tildeſley* contends for it by ſix reaſons: Sir *Henry* (3) *Spelman* (inclining thitherward) knows not where to finde the benefit ſave in the parſonage houſe and glebe (though it may be well enough thought how they came in afterward, and otherwayes.) (4) *R. Hollingſhead* ſlubbers it over with a right or liberty (from burdens) to tythes, (ſo (5) tythes Then in his

(1) *Chronic. in the life of K. Ethelwolph, pa.* 99.
(2) *Animadverſions on M. Seldens Hiſtory of Tythes. cap.* 8. *pag.* 173.
(3) *Concil. Britan. tom.* 1. *pag* 352.
(4) *In his Hiſtory of England, in the life of this King.*
(5) *He ordained that Tythes and Lands due to holy Church, ſhould be free from all Tributes and regall ſervices. Speed hiſt. lib.* 7. *cap.* 32. *ſect.* 6.

(6) *Martyrolog. lib. 3. pa. 136. ad an. 844 in the life of Ethelwlph.*
(7) *Ier. Stephens in pag. 132. of Sir Remy Spelman of Tythes.*
(8) *Mr Selden in his Hist. of Tythe, cap 8. pag. 206.*

acknowledgement were.) (6) Mr. *Foxe* somewhat faintly; the tythe of the Kings lands and goods in *West-Saxon-rick*: (with freedom from Servage.) But a (7) late setter forth of a very learned and pious tract of this argument alledgeth it for a perpetual right of tythes: and above All, (8) he that had compared most accounts and was as well able to judge as any; and now after neer thirty yeers of painful and succesful study is yet living, and ready no doubt to make good his constancy, and justifie his opinion, then published, and not appearing yet revoked, makes it out clearly for a right and law of tythes: His words are these.

If we well consider the words of the chiefest of those ancients, that is, Ingulphus, we may conjecture that the purpose of the Charter was to make a general grant of tyths payable freely, and discharged from all kinde of exactions used in that time, according as the Monk of Malmesbury, *and* John Pike *in his subplement of the History of England expresseth it.* Decimam (*say they*) omnium hidarum infra regnum suum a tributis et exactionibus Regis liberam Deo donavit: *that is, granted the tythe of the profits of all lands, free from all exactions. For the granting of the tenth part of the Hides or Plowlands, denotes the tenth of all profits growing in them as well as* Decima acra sicut aratrum peragrabit, *which is used for the tything of the profits, in the Laws of King* Edgar, Ethelred, &c. *and doubtless* Ingulphus *no otherwise understood it then of perpetual right of tythes given to the Church, where he remembers it with* tunc primò cum decimis, &c. *So that the tythe of predial or mixt profits was given, it seems, perpetually by the King with consent of his States both Secular and Ecclesiastick, and the tyth of every mans personal possessions were at that time also expresly included in the guift, because (it seems) before that,* (hitherto that learned man) *the payment of all tythes had commonly been omitted.* Not so neither; for what was then the operation of those weak, and yet intended strong and powerful Canons before mentioned, made with so good advice, and strengthened with the twisted powers of both States in *Mercia* and *Northumberland*, besides what in *Kent, a Rege, Baronibus & Populo?* But for All the land,

it

it ſeems none before had power of impoſition; and for *Weſt-Saxony* none had attempted; (for the King that was preſent at opening of the letters, we found not there at the concluſion of the buſineſſe (1) before:) So that *Tunc primùm* for this and for All together, the decree might go forth here ſucceſſefully, and the liker it did, for that (as before) we read of no more Donation, but Confirmation, no need to Settle after, but order, as was ſaid, to Pay. (1) *Pag.* 70.

So that conſidering the power was then veſted in the Monarch-granter, and alſo the conſent of Tributary, and, as it were, pupil-Kings, with Nobles, Peers, and all their people: Conſider likewiſe the interpretation of dark words by thoſe whoſe inſpection was like to pierce deepeſt into the meaning of what was delivered (or is perplexed) with obſcure expreſſion, And after interpretation fairly ſetting of ſuch a purpoſe, we need not doubt to conclude: That ſo long agoe as thoſe remote times, about 800 years ſince, above 200 before the Conqueſt, even then when the Common Law was but in her ſwadling-clothes, whereof little hitherto, (if ſhe were then born, as I beleeve ſhe was,) Even then, and as ſoon and faſt as we may believe the power of Chriſtian Religion to have had its work in the boſome of beleevers to make them contrive a continuall and ſetled ſupport for their ſoul-ſaving new-come Goſpel, Tythes had a publick vote, which created a legall Right; And, though I will not ſay All was done accordingly, and the objection of after Arbitrary conſecrations poſſible in ſome ſenſe, may take place in their way notwithſtanding; yet as farre as Law may create a right, Then were Tythes no longer a part of Benevolence and Bounty, but of diſtributive or retributive Juſtice, every one living within the compaſſe of the Church being bound to pay back this ſupport for the Miniſtery thereof, in fulfilling thoſe generall Canons of the New-Teſtament, that call for maintenance, and would not have the labourer uncertain of his reward, but the Oxes mouth unmuzzled (to take thus much) and the Catechiſt to partake with the Catechumene in all his goods.

For we are not to look upon Regall and Legall commands, as empty Cracks, fit onely to fill the world with noiſe and clamour, and exerciſe the chat of the buſie multitude, or learned mens diſcourſes, but Canons well mounted, which being diſcreetly levelled alſo, are able to make their way through whole ſquadrons of oppoſing Rebels to Law and Juſtice, of that irreſiſtible power, that though private men would, they cannot contradict, evade, or gainſay; As being thoſe words of publick vote and higheſt authority, that if they ſay, Yes, will have no Nay, The moſt ſerious diſputes and reſults of Reaſon that are extant amongſt men, and that have this ſoveraign property always annexed to them, That they of all other look not to be Diſputed but Obeyed. *Lex eſt ſententia, qua bona tum præcipiuntur, tum mala prohibentur,* (ſayes *Jo. Calvin*) *Jus eſt authoritas ſeu facultas agendi ſecundum legem. Juſtitia eſt virtus perducens iſta ad exercitationem. Proinde quoties audis has voces, Lex, Jus, Juſtitia, ſtatim cogita, monente Oldenb. te divinum aliquid atque excelſum audire, hoc eſt, veram & à Deo ipſo dictatam honeſtatis formulam.* Almoſt the voice of God, and not of man, as if they were.

Lexic. Iuriſprud. pa. 526. in vocab. Lex.

Neither is one thing more to be omitted, who was preſent and aſſiſtant at this great work, Him I take the world to have ſince owned and remembred by the reverencing name of (1) St *Swithune*: formerly the Kings Chriſtian Tutour, now his Chaplain, Biſhop of *Wincheſter*, and (2) ſucceſſor of the King himſelf in that See, bleſſed by God to keep the Kings heart, and the ſtate of the Re-publick firm to Chriſt in that tottering age, when it was hard to keep all from reclining and relapſing to flat Idolatry. For they had lately worſhipped ſtocks and ſtones, and given the immediate iſſues of their ſoules in their thanks, praiſe, and All devotions to the works of the

1) *Vid. Spelm. Concil. tom Eod. pa.* 349.

(2) *For the King was committed firſt to the Care of Helmeſtan Biſhop of Wincheſter, and by him conſigned over to Swithune: Helmeſtan dying, he was made a Deacon, and elect, if not Conſecrate Biſhop of Wincheſter, and thence reſumed to the Crown.* Speed Hiſt. lib. 7. cap. 32. ſect. 1.

—— ſubdiaconatus ordine initiatus. Polyd Virg. Hiſt. lib 5. pa 91.

Vid. Stow. Chron ad an. 829. & Hen. Huntingdon. lib. 5. pag. 348.

their own hands, (3) *Tuisco*, *Woden*, *Thor*, *Frea*, *Seater*, (4) *Herthus*, *Flint*, (5) *Ermensewl*, (6) *Tibba*, (7) *Eoster*, and such other sometimes worshipped for Gods and Goddesses here, whose names are now either almost happily forgotten, or if remembred, not very easie to be understood. But it seems the Holy Christian *Swithune* joyned in with his formerly pupill, now Lord and King to keep him close, (&in him vertually and potentially All,) to the heavenly teaching of the Bible; and that the doctrine thereof might continue. they added this pillar of worldly maintenance (the having a hand wherein might procure *Swithune* so reverend an estimation in Christians memories ever since,) (according to the patern in the mount, their guide, *Levi* of the Old Testament,) To sustain and provide for the Preachers and Ministers thereof: And God so blessed, that as that gift has remained sacred and inviolable hitherto, so by it the ministration and Ministers of sacred Christian Mysteries have had a subsistence ever since, and endowed preachers been as so many Candlesticks then set up, which resting on this pillar, have held forth that light of heaven which yet we enjoy to this present day. Future superstitions may have made unnecessary additions, and the honour justly given to the memory of this good man, for a work so gloriously deserving, in the name and reputation of

(3) The names of sundry Idols here worshipped before the Gospel enlightened: And as the Pagan Romans made theirs præside over the dayes of the week, whence *Dies Solu*, *Dies Luna*, *Mercurii*, *Martis*, &c. So here they called the dayes from them, if not more, and we yet retain the memoriall thereof in *Sunday*, *Monday*, *Tuisco-day*, (or *Tuesday*) *Wodensday*, *Thorsday*, *Freaday*, & *Seaterday*. More appearance of truly evil, then in some other things in jealousie branded for Idolatrous? See *Verstegan. Antiq. pag.* 10, 11. & *pa.* 68, 69, &c.

(4) Herthus,) *Suevorum, & Borealium Germanorum Dea, perinde & eorum Anglorum qui cum Saxonibus Britanniam nostram appiscantes, numen nostratibus reliquerunt. Cultum & immanitatem Dea refert Tacitus, in Mor. Germ. Readigni deinde, & Aviones, & Angli, & Varini,——in commune Herthum id est, Terram matrem colunt, eamque intervenire rebus hominum, invehi populis arbitrantur*: Stoneheng in Wiltshire thought to have been a Temple to this Goddesse, in plain English, *The Earth*: *Vid. Speim. Gloss. pa* 350 *in Herthus.*

(5) *Verstegan. pa* 79, 80

(6) The Goddesse of Hunters and Falconers, worshipped at R hall in the edge of Rutlandshire, near Stanford: *vid. Camden. Britan. in Rutlandshire.* Another place of note for like worship whereto was *Godmanham* (in Bede's time *Godmundingham*) near Beverley in Yorkshire, by the priest thereof *Coyfi* profaned and delivered over to Christian worship: *id. pag* 702. S. Pauls in London was dedicate to Diana; (some Houses adjoyning are called Dianaes Chambers yet.) The Church of Westminster to Apollo, *id. in Middlesex.* God blesse us! shal we ever live to fear the return of these Banished and forgotten Idols to their native homes? Or the removall of what fast kept them out (being banished,) give cause of that Fear!

(7) Or *Oster*: a Goddesse giving denomination to the Month of April, called by the Saxons, Oster-monat: we yet retain the name of Easter thence, happing usually in that month.

a Christian Saint, have contracted after rust and blemish by the zealous ignorance of times and men; who not content save to overdoe, nor esteeming reverence any thing without worship and adoration, thought the Saint not enough, unlesse he were advanced higher to the name and reputation of a *Divus*, or petty-God, and so partaking now in nearnesse of kinde as well as name with his Soveraign, must not wait any longer about the footsteps of the Throne, but be lifted up to sit higher on some lower seats of honour with his maker; which cast a blemish on the very Purity of heaven, and as one said, made the Christian world begin to be ashamed of nothing more then of her Saints, which were indeed the honour and glory of the world.

But howsoever the work was gracious and glorious, of wonderfull influence to the piety of all following times, such as may speak it self accessory to much of the practised publick Worship that hath been exercised ever since to Christ his honour, in our land, and hardly to be parallelled by any act of equal dimensions, save perhaps the contrary work of darkneſse, (if mens covetousnesse should be so far hearkened to,) in with-drawing this support in order and preparation to the destruction of Religion it self, and bringing Apostasie to that we had before Tythes were paid, *Tuisco*, *Woden*, *Thor*, *Frea*, *&c.* or if these be forgot, taking up that is nearer hand and known, the sensuall dreams of *Mahomet*, (though such (1) worshippers pay their Tythes duly,) or indeed no one can foresee probably what. And if these be not the dreames of some troubled minde, but the sober and well-advised thoughts of one jealous for the honour of *His God*, not the melancholick muses of some distempered fancy, but the calm and well-composed serious consultations of one tenderly carefull, and tremblingly fearfull about the honour of *his beleeved Saviour and Redeemer*, prudently casting what may be, yet providently fore-casting it may not be, and yet but reasonably doubting too what is like to be; grounded onely on rationall conjectures, and accompanied with manly feares, lest *Christ* his name should be wiped off from the earth, *His* honour disparag'd, *His* worship undermined,

(1) Which they may have from the Mosaical law, *Selden. Hist. of Tythes c 3 fol. ult. Ioan. Baptista Alfaqui* who had been a Mahometan priest, sayes, 'tis one of the great sins whereof the two inquisitour Angels examine souls after death, Whether they have paid Tythes duly? [*Pages. Haeresiogr. in the Postscript.* The dreadfull manner is set forth by M. *Prat. hist. lib 3. cap. 12. p. 304. Edit. 1614*

His

His faith deſtroyed, and *Himſelf* forgotten where he hath been worſhipped for a God; It would then be thought on again and again by all thoſe who pretending to worſhip *Chriſt* can think of undoing his Miniſters, and in(or with) love of the Maſter, give themſelves leave to doubt whether they may ſtrip of their Own his Servants that doe his Publick work, leaving Religion as naked as in the day ſhe was born here, to be covered by meer Charity of the Pariſh, or provided for by ſome ſlack and ſlender weekly allowance: And (then which cannot come a worſe miſchief) intruſting the Religion of the moſt High God, and its ſtability, to the tottering contributions of fickle Men, who if they be of one minde to day, may be of another to morrow; what now they love, then loathing; and always eſteeming their wealth dearly, cannot but be continually loth to part with what they love: (which if it ſhould be, O Jeſu, (As *Joſhuah* ſometime threw up complaint to heaven upon a pang of zeal, in like danger,) *What ſhall be then done to thy Great Name*!) But ere this be, more ſtones muſt be ſtirred, 'tis like, then we are aware of, or are yet thought on for motion: intwiſted eſtates doe not uſe to decay ſingle; nor that ſink alone of it ſelf, that ſettles on the ſame floor or bottom with others: The ſtrength of property it ſelf muſt grow weak, ere theſe dues can be ſhaken, and the owner of the nine parts be left little enough by the Same reaſon, (unleſſe by arbitrary diſpoſition, becauſe 'tis fit he ſhould have it,) before This Tenth ſetled with them, and by equal ſtrength of right can be taken away. Think of ranſacking the Tenth rafter out of the roof, or the Tenth ſtone out of the foundation, and then compare and Judg. But think withall, that rafter, that ſtone was there placed in *Swithunes* dayes.

Joſh. 7. 9.

CHAP.

CHAP. XI.

WE have done with *Donation*; A thing can be given but once, and this hath been here all over; now next, as annexed thereto or a part thereof ſhould follow, *Tradition*, without which the (1) Lawyers ſay Donation is invalid, foraſmuch as this in act (2) parts with the thing, and till it be, even a guift remaines with the Giver: but the expectation hereof may well be ſuperſeded here, foraſmuch as the right of tythes is a Right, and ſo not capable of delivery: For it is a Right, and not (3) a body, which can nor give, nor take; and the rules of the law muſt not think to alter the nature of things, or make that required, which to be cannot.

1) Item non valet Donatio niſi ſubſequatur Traditio, quia non transfertur per homagium res data, nec per chartam vel inſtrumentorum confectionem, quamvis in publico fuerint recitata. *Bracton.* de aquir. rerum dom *cap.* 18 *ſect.* 1.

(2) Videndum eſt primò quid ſit Traditio: Et eſt Traditio de re corporali propria vel aliena, de perſona in perſonam, de manu propria vel aliena, (ſicut procuratoris, dum tamen de voluntate Domini,) in alterius manum gratuita transſlatio. Et nihil aliud eſt Traditio in uno ſenſu, niſi in poſſeſſionem inductio. *id. ibid Sect.* 2. *vid Flet. lib.* 3. *cap* 15. *Sect.* 4.

(3) De re corporali ideò dicitur, quòd res in corporalis non patitur traditionem ſicut ipſum jus, quod rei ſive corpori inhæret: et quia non poſſunt res incorporales poſſideri, ſed quaſi, ideo traditionem non patiuntur ſed quaſi, nec adquiruntur nec retinentur niſi per patientiam et uſum. *Bract.* ubi ſupra *fol.* 39.

Iura ſiquidem, cum ſint incorporalia, videri non poterunt, nec tangi, et ideò traditionem non patiuntur, ſicut res corporales. *id. cap* 23. *Sect.* 1. *fol.* 52

Item acquiruntur nobis temporalia (corporalia *I beleeve, it ſhould be,*) per traditionem: res enim corporales patiuntur traditionem: ſecus verò de incorporalibus, ut ſunt jura, advocationes eccleſiarum, &c *Flet. lib.* 3. *cap.* 2. *Sect. fin.*

Tradition is here therefore ſet aſide, in other caſes neceſſary, and this Guift being perfect without it, our next muſt be of Ratihabition or Confirmation, under which head march all the following allegations to our times, to (4) ſtrengthen the frame that is now built, and inforce from time to time *to part with and give out* what was here ſet aſide and appointed to be given; What thoſe acts in law are ſhall

(4) Confirmare eſt enim id quod prius infirmum fuit ſimul firmare. *id. lib. Eod. cap.* 14 *ſect* 5.

shall not prævioufly take up much inquiry from (5) *Juſtinian* or (5) *Weſtminſter*, I content my ſelf with their (7) general nature, to ſettle what has been (8) placed; *Rem ratam haberi*, that that which is, they do, as the (9) word is, Confirme.

(5) *Vid. F. Ratam rem haberi, & de ratihabitione lib. 46 tit. 8.*

(6) *Vid. Cook Inſt. 1. on Littleton. ſect. 515. fol. 295.*

(7) Generaliter effectus ratihabitionis eſt, ut voluntatem noſtram declaremus, & negotium, quod alioqui ad nos nihil pertineret, noſtrum faciamus. *Cabl. Lexic. Juriſprud. pa. 789.*

(8) Ratihabitio eſt conſenſus, qui negotium perfectum inſequitur: *Id. ib.*

Ratio enim habitio ad confirmationem prioris poſtulati pertinet: *F. de bonorum poſſeſſionibus l. Quotiens.*

(9) Videndum eſt igitur quid ſit Confirmatio: & eſt confirmatio prioris juris & dominii adepti firmatio, cum prima firmitate donationis; nihil enim novi attribuit, ſed jus vetus conſolidat & confirmat: *Bracton. lib. 2. cap. 35. ſect. 2. fol. 58.*

Men, no doubt, were loth to part with their own, to weaken their worldly eſtates, though it were to ſtabliſh the Religion of the moſt high God, *to make them baggs* which as our Saviour (1) ſays *wax not old*, to (2) *lay up treaſure in Heaven* ((3) ἀποθησαυρίζειν εἰς τὸ μέλλον,) *for another world*, and *to make* (4) *friends of this Mammon of unrighteouſneſs, that when need is, they may receive into everlaſting habitations*: This made the lawes frequent, the repetitions many, the reinforcement earneſt, the tranſgreſſion pœnal, and each continued in and through every age; that ſo, if might be, *Ananias* might be met with at every turn, and his wife *Sapphira* kept back that neither ſhould venture again to pluck back what onely true piety and the love and fear of God had prompted them at firſt to give forth. And now behold the laws are not to pay, but be puniſhed if men paid not.

1) *Luke 12. 33.*
2) *Matth. 6. 20. Cap. 19. 21.*
3) *1 Tim. 6. 19.*
4) *Luke 10 6.* Sermone etiam admonemur divino, terrenis cœleſtia, & caducis his noſtris æterna illa promereri: *Aſtheſt. in præfat. ad leg. ſpeaking of Tythes.*

CHAP. XII.

THe firſt that occurs, (in time and ſo in our order) is that of *K. Alfred* and is in the preface to his laws, (remember we are now in the dawning of the common-law, and this allowance ſhall grow up with it,) which, before, he out of modeſty acknowledged to borrow from the tables of his Anceſtors; and ſpeakes in brief, thus: (1) *Thy tything portion, or thy tythes give thou to God.* If any did not, it was after agreed between (2) him and *Guthrun* the *Dane*, that *the ſtranger ſhould pay lahſlite*, that is, as 'tis commonly interpreted, twelve Ores, and *the Engliſh his forfeiture, and with out this, no peace*: which League and Law was after confirmed by (3) K. *Edward* (*Alfred*'s ſon) and the ſame *Guthrun*, and oftentimes after repeated and eſtabliſhed to the common profit of the Kingdom

1) *Præfat. in leges Alfred. c. 38. Lamb. Arch. p. 19. Spelman. Concil. tom. 1. pa 360.*

2) *Vid. Leg. Eccl. ab Alured & Guthurno ib. pag. 377. cap. 9.*

K. *Aethelſtane* is after very earneſt about the year 930. *by all that is ſacred* (4) *conjuring al under his Juriſdiction to pay all*: *tam vivorum animalium, quàm annuorum terræ proventuum decimas*, both of Cattle and fruit: His Aldermen and Reves he commands to do the ſame, and ſeriouſly adviſes to conſider what *Jacob* vowed, my tythes and peace-offering will I offer unto thee, and what is elſewhere with ſeverity enough; If we will not give the tenth, the nine other parts may be taken away, and nothing left but the Tenth. Remember he was not a Church-man but a King, and ſo ſpake no doubt as ſeeing expediency enough of what he ſpake thus, and for his people.

3) Hæc ea ſunt ſenatuſconſulta ac inſtituta, quæ primò Alfredus & Guthrunus reges, deinde Edowardus & Guthrunus reges, illis ipſis temporibus tulere, cum pacis fœdus Daci & Angli ferierunt, ac ſeſe mutuo amplexi ſunt, (*a part of the ſoder that combined them together was a law of Tythes, which they agreed both ſhould pay.*) quæque poſtea à ſapientibus recitata ſæpius, atque ad communem regni utilitatem aucta, atq; amplificata ſunt: *vid. fœdus Edowardi & Guthurni. apud Lamb. Arch. p. 41. et Spelm. Concil. p. 390. & 391.*

4) *Leg. Eccleſ. Æthelſtani apud eund. p. 402. col. 1. Lambard. Archaion, p. 45. & Fox Acts and Monum. lib 3. p. 149.*

Edmund

Edmond his ſucceſſor followed him, and (1) in a frequent Synod held at London about the yeer 944. as well of Lay as Eccleſiaſtical perſons, (a Micelne Synod it was, a Parliament, no doubt) chargeth every *Chriſten man to pay his tythes duly, and upon his Chriſtendom.* I omitted an Eccleſiaſtical Conſtitution made by (2) *Odo* Arch-biſhop of *Canterbury* about theſe times, becauſe it may be judged not binding; not doubting yet the common law, as then, to conſiſt of ſuch rules, (as they were after, of the Conſiſtory) as well as the ſecular: For if this were not, there ſhould have been no rule brought along with the Eccleſiaſtical Judge, for him to Judge by. 'Tis known how till the Conquerors days, when the Courts were parted, This Superviſor ſate in the County Court, (as over a Provincical Presbytery,) to Judge with the Kings Reve, or the Reve of the Shire, or Shire-Reve (ſince Sheriffe,) the one to ſee Gods right done, as the other to ſee the Worlds; and what could be more expedient then that they ſhould bring their ſeveral rules along with them, the Church-man his Canons to rule there in fitting things, as the other his ſecular lawes? So that till the juriſdictions were parted, I doubt not to think without hæſitation, this and ſuch Canons, The Canon in general, was a part of the Common-County law, and ſo uſed, and after digeſted into a form by it ſelf for the Conſiſtory; whereto adding the way of tryal, *ſc.* according to the Civil law, by citation, proctor, libel, &c. and ſuch after ſuperinducements, made the Court, as it was late found and left: But this by the way.

(1) *Leg Edmundi & c Lamb Archpa. 57. cap. 2. Spelman. Conc. adan. 944 pag. 410. cap. 2.*

(2) Decimo capitulo mandamus, & fideliter obſecramus, de decimis dandis, ſicut in lege ſcriptum eſt: Decimam partem ex omnibus fru gibus, &c. *ib ad an. 943. p. 418. cap. 10.*

CHAP. XIII.

GO on to K. *Edgar*: and he was not far of, (within the ſame Century till:) which pious King (1) ſtrengthened all that was before by adding to law and puniſhment a courſe how the one ſhould be inflicted to further the Execution of the other. *And, He that will not pay his Tythe of Cattle before* Whitſuntide, *his tythe fruit before the Equinoctial* (or Church-ſcet, (or Scot, or portion) *before S. Martins day*) *let him pay his forfeiture, ſaith he, as in the Doom-book.* What? *Let the Reve, Biſhop and Church-Prieſt meet, and compel him, if he be unwilling to pay his tenth to the Church that he ought, leaving to him but* (2) *the ninth: as for the other eight, let the Lord have the one half, the Biſhop the other; and this without reſpect of perſon, whether he be the Kings man, or Thanes.* Which very courſe and penalty is after approved and ſtamped for currant by the (3) Daniſh K. *Knout* in aſſembly of his wiſe men at *Wincheſter*, about the year 1032. with ſome inconſiderable alterations, And in ſubſtance continued to our (4) *Hen.* 1. time, ſince the Conqueſt, as appears by his laws lately publiſhed.

(1) *Lamb. Arch. p. 82. ca 3. Spelm. Concil. ad an. 967. pa. 444.*

(2) Noſti, quia Dei ſunt cuncta quæ percipis, & de ſuo non accommodas rerum omnium conditori? non eget Dominus tuus, non præmium poſtulat ſed honorem, non de tuo aliquid exigit quod refundas. Primitias rerum & decimas dignatur petere, & negas avare. Quid faceres, ſi novem partibus ſibi ſumptis tibi decimam relinquiſſes? Quod certè jam factum eſt, cùm meſſis tua pluviarum ſubtracta benedictione jejuna defecit, & vindemiam tuam aut grando percuſſit, aut pruina decoxit. Quid avidè ſupputas? Novem tibi partes retractæ ſunt, quia decimam dare noluiſti. Conſtat quidem quod ipſe non dederis, ſed tamen Deus exigit. Hæc enim eſt Domini juſtiſſima conſuetudo, ut ſi tu illi decimam non dederis, tu ad decimam revoceris. ——Dabis impio militi, quid non vis dare faciendo tibi. *Aug. ſer. 219. de temp. tom. 10. pa. 370.*

(3) *Leg. Canut. Lambard. Arch. pa. 101. ſect. 8. Spelmn. Concil. ad ann. 1032. pa. 544 cap. 8. & pag. 563 cap. 15.*

(4) *Leg. Hen. 1. apud Lambard. pag. 182. cap. 11.*

Something of the Church intercurres more about this time, which, from the nature of the thing, it may be expedient but to

to name; as an Ecclesiastical Constitution made under the same *Edgar, That* (1) *the people should be taught to pay to God that which of Right they ought*, (which mark was Then a Right, whether Humane or Divine, I inquire not; If this, it was the stronger; if but that, 'tis it I contend for: but a Right:) *as Tythes and other things*: And another calculated for the Northerne Latitude, (for the collection is stiled, (2) *Leges Presbyterorum Northumbrensium*) and bound up with K. *Edgars* lawes, where is *penalty for every of the Kings Thanes* (or lords) *that detaynes, ten half markes; for every land-owner six; for every Ceorle or* Husband-man *twelve Ores*: And another written by *Ælfrike* (3) to *Wulfine* of the same general nature, thought not unworthy to be preserved among the undoubted monuments of that Age: All which I yet so slightly pass over, as that my judgment remaines the same both one way and other as before; and for what was stampt with the authority of the Church, that it had no doubt the Countenance of the Sate, to be then a ruling part of the Common All-ruling Law; which consisted both of Canon and Statute, (as they were after Called,) and each was a rule for what they did concern in the same Court, where both Jurisdictions were then Combined, and both their Lawes executed.

(1) Docemus etiam, ut Sacerdotes populũ instruant, de his quæ jure Deo sunt reddenda: decimas scilicet, & res alias, &c. Canones dati sub Edgaro: *apud Lambard. pa. 71. Can. 54. Spelm. ad an 967. pag. 454.*

(2) Si decimas qui Thanus est regis detinuerit, 10 pend to semimarcas, possessor prædiorum 6, & Cyrliscus seu Paganus 12. oras. *id. pag 501.*

(3) *Ælfric. Canth. a 578 ca. 24. & Lamb pa. 133.*

CHAP. XIV.

THe next Century gives us the (4) Parliament of *Ænham*, made up of both States, as well Church as Peers under King *Ethelred*: in the contraction whereof is commanded, that, (5) *Gods dues be paid yeerly, Tythe of young at Whitsuntide, of fruits at Allhallondtide*: but in the larger latine,

(4) Concilium Ænhamense generale, seu Panangelicum hortatu Ælfragi Dorobernensis & Wulstani Eboracensis Archipraesulum, ab Æthelredo Rege edictum, accersitisq; Episcopis, & universis Anglorum optimatibus, in die S. Pentecostes celebratum. *Circa an 1009 Spelm. p 510.*

(5) Iura Deo debita unusquisq; annuatim rectè pendito, &c. *Id. p 517. K 10.*

and

and a coppy of the same date of writing, Thus: *Let* (1) *the tythe of fruits* (saith the Kingdom,) *and Calves, and Lamb, and other Ecclesiastical duties be paid yeerly to the Lord at fitting seasons:* (2) *Eleemosynæ aratrales*, or *Sulh ælmes* (as I am informed, a penny a yeers pention upon every plough,) 15. *days after Ester: Calf and lamb at Whitsuntide: tythe corn about Allhallondtide; and all these to God*, and by *order of Parliament.* (3) It may breed some doubt of the universality of this power, because it is called a *Councel* or *Synod*, which use to be the titles of Ecclesiastical meetings: But this is satisfied in part by a learned Kinght, that it 1. (4) consisted of both States. 2. was convened by the Kings power. 3. treated of things not of the Church. and 4. met at (5) Parliament time: which as times then were, was thrice a year.

For in those dayes at the three great feasts both the King expected his Nobles to come unto him for greater solemnity of the time, and being met they used to consult, *de arduis rei-publicæ negotiis*, which was Parliament work: (which also continued long after, as appears through the course of *Matthew Paris* his History, who wrot to *Henry* the third.) So that I doubt not to affirm both that this was a Parliament, and that one such meeting in three yeers is no such news in *England*; for of old (beside the law, and observation thereof in practise about *Edward* the third's time, for one) before that they had usually three Parliaments every year.

(1) *Id. pag.* 527. *cap.* 10.

(2) Sulh, vel potius Sullow (verbo paulùm immutato) plurimis in locis etiam nunc aratrum significat: ælmess notioris est significationis quam ut interprete indigeat ùllo. Ego me legisse memini in vetustissimo quodam legum *Ethelredi* Regis libello impositum tunc temporis in singula aratra Denarium unum. Ea fortasse pensio est quam illi Sulh-ælmess appellabant. *Glossar.* ad *Lambard. Arch. pa.* 217. in *vocab. Arationis eleemosyna.*

(3) Dubitaverit fortè quispiã, &c. *Spelm. pa.* 529.

(4) *Beside what before*: Quodam tempore contigit ut Regis Æthelredi edicto concrepante, Archipræsulumque Ælfeagi & Wulfstani hortatu instigante, universi Anglorum optimates Die sancto Pentecostes ad locum ab indigenis Eanham nominatum, acciti sunt convenire: *Id. pa.* 525. *And in the close*; Hæc itaque legalia statuta vel decreta in nostro conventu Synodali à Rege N. magnoperè edicta cuncti tunc temporis optimates se observaturos fideliter spondebant: *Ib pag.* 529.

(5) Sc *at Whitsuntide, as K. Edmunds was at Easter*: In quibus celebritatibus, (sicuti & in illa Nativitatis Domini nostri) convocare Reges, ex antiqua consuetudine, soliti erant proceres suos utriusque Ordinis ad fastum Regium adornandum, & Consilia regni ineunda, quod latius alibi declaravimus: *Ib.*

K. Knouts great Councell at Winchester, was after at Midwinters tide, or in Natalitiis Domini nostri: *id. p.* 539. *& p.* 560. *K. Bertulphs before at Easter*; (*and a very Parliament:*) *id. p.* 344. Ex more enim & obsequii vinculo antiquissimo tenebantur proceres in tribus maximis festivitatibus; Christi *sc.* Natalitiis, sancti Paschatis, & Pentecostes, Regi annuatim adesse, cùm ad Curiam & personam ipsius exornandum, tùm at consulendum de negotiis regni, statuendumque prout fuerat necessarium. Prodire igitur in diebus illis Rex solebat coronâ redimitus, & pro Fastu Regio se in omnibus exhibere: donec morem labefactavit Henricus 2. &c. *Id. p.* 347.

In

In the ſame Kings time was alſo another general meeting at *Habam*; *Hæc inſtituerunt Ethelredus et ſapientes ejus apud Habam*, is the title, and part of the text (from the (1) Abbot of *Jorneaux*,) thus:

(2) *Let every Thane* (*or lord*) *Tithe all that he hath*: And (3) *we command that every man upon his love to* God *and all Saints give his Church Scot and true tythe, as in the dayes of our anceſtors*, (it was no new uſage, then, but inherited from the days before) *that is, his tenth Acre, as the plough ſhall goe*: *and let every cuſtome be made good*, ſuper amicitiam Dei, *for Gods love to the Mother Church to Whom it belongeth, and let no one take from God* (mark the weighty ingagements ſtill) *that which belongs to God and our Predeceſſors* (again) *granted.*

(1) *Hiſtor. Ianal. fol.* 65. *apud Seld. de decim.* p. 225. *ſince Publiſhed by* Spelman: *Concil. circa Ann.* 1012. p 531.

(2) Omnis Thainus decimet totum quod habet. *Ib. c.* 1.

(3) Et præcipimus, ut omnis homo ſuper decretionem Dei & omnium ſanctorum det Cyriſceatum, & rectam decimam ſuam, ſicut in diebus anteceſſorum noſtrorum quando melius fecit; hoc eſt, ſicut aratrum peragrabit decimam acram: Et omnis conſuetudo reddatur ſuper amicitiam Dei ad matrem Eccleſiam cui adjacet, & nemo auferat Deo quod ad Deum pertinet, & prædeceſſores noſtri conceſſerunt: *pag.* 531. *ca* 4.

CHAP. XV.

BUt none did more in this kinde then the Conquering *Dane*. Firſt, he (4) ſends from *Rome*, mindeful of Juſtice here, to all his Officers and Miniſters, threatening *if all dues were not paid, particularly Tythes, the diſobedient ſhould ſmart from the ſharpeſt edge of his ſevereſt laws*. Secondly, when he came, (*Nec dicto fuit deterius factum*, as ſaith the Hiſtorian) he cauſed all the (5) ancient laws to be reviſed, eſpecially thoſe of his Predeceſſor *Ethelred*, (amongſt which were for tythes, as may be remembred from but now.) and Thirdly, (6) by more aſſurance and paſt all conjecture he revived

(4) *Vid* Epiſtolam Canuti Regis ad Anglorum proceres anno Regni ſui 15. Domini noſtri 1031. in cod. pag. 535.

(5) Omnes enim leges ab antiquis regibus & maxime ab anteceſſore ſuo Ethelredo latas, ſub interminatione regiæ multæ perpetuis temporibus obſervari præcipit. *Malmeſbur. de Geſt. Reg. lib* 2. *cap.* 11.

(6) Quotannis quiſq; Deo jura juſtaſque debitiones ritè perſolvito: Arationis quidem eleemoſynam ad decimum quintum à Paſchate diem pendito: fœtuum decimas ad Pentecoſten ſolvito; terræ denique fructuum decimas reddito ad feſtum omnium ſanctorum celebre: *Or if not, as in ſaid. Vid L. Eccl. Canut. K.* 8. *Spelm.* p 544 *& c.* 15. p. 563. De decimis ad Eccleſiam Thani pertinentibus, *vid. c.* 11. *p.* 545.

(1) *Where of before pag. 84.*

vived & awakened that notable paſt law of K. (1) *Edgar*, made up of 3 parts twiſted together for mutual ſtrength, *Rule, Puniſhment, & order for Execution*; willing that men ſhould pay; if they did not, they ſhould loſe 9 of 10. And who ſhould ſee things done, but they who by their work were to be rewarded for their labour? Which was much, and as much as could be expected, in tender regard to what (of that little account is,) findes ſo much place, and in very faſt and ſafe accordance to what had been before. Indeed it ſhould be ſo: States ſhould be conſtant. Not uncertainly whiffling up in looſe and various decrees, but be gravely ſtayed and fixed to their received orders, Not giving the world occaſion to think their Laws are Humane Ordinances by this, That they change like men; but partaking in ſtedfaſtneſs with him from whom they are, reſemble Him in Immutability who is the Same for Ever. Juſtice and Truth are never but the ſame; Why ſhould then their Rules vary? The ſame thing cannot be right and wrong at times; why ſhould the Lesbian rule warp hither and thither, as 'twere to ſay it is! It may make the jealous world ſuſpect ere long that Lawes are nothing elſe but witty devices to ſerve the contrivers own turn, if, like the ſayles of a ſhip, they may be ſhifted and turned hither and thither upon occaſion: and cauſe them wiſh perhaps rather they had no ordinance at all, then what may be planted againſt their own ſafety; finding ſuſpicion in the ſanctuary of their refuge, and doubting what was given for their wealth may prove an occaſion of their falling. The firmneſs of a publick decree could never have found a fitter meaſure then that of *the Laws of the Medes and Perſians which alter not*; whereto the world owes much of its happineſs: nor can we ever hope for any more certainty of any thing we poſſeſs and call good on earth, then there is of Juſtice; and the rule and meaſure thereof is the conſtant Law.

Dan. 6. 8, 12, 15.

This the wiſe and victorious *Dane* knew, (perhaps by cheriſhing ſuch axiomes and perſwaſions at home victorious) which made him ſtrike in as much as might be with the paſt and eſtabliſhed Laws, to ſhake the Kingdom the leſs by a Conqueſt, and in their ſtability to provide for much of the wholes,

wholes, and his own. As indeed this courſe often leaves a Kingdom ſafe with change of the head, and Government quiet upon any change of Governours. For the perſon at top is never ſo material as the diffuſed and coincorporate Law throughout the body politick, which ſettles down and is conveyed, as the branching Nerves, into every the remoteſt member of the re-publike, and which if it ſuffer trouble by change, many a paralytical or ſpaſmatical fit cannot but muſt needs go therewith, diſordering the whole, and twinging the very heart; if theſe are forced out of the way, or ſuffer any conſiderable diſtention, laxation, mutation, obſtruction, trouble or diſturbance whatſoever; which alſo the next Norman Conquerour found or was taught; for the Nation that was in part willing (or were forced) to receive him, would never yet give conſent that their laws (the ſinews of the State) ſhould be touched, which put him upon this hard Dilemma either to imbrace Theſe, or be rejected by Thoſe, to let Them alone, or Himſelf never ſhould have been quiet.

CHAP. XVI.

OUR next ſtep (the laſt on that ſide the Conqueſt,) is to *Edward*, *ſurnamed the Confeſſour*; That bleſſed man was bleſt indeed to be the Authour or inſtrument of much good to this indeared Nation. He firſt obtayned help of God to remove and diſpel that coacervation of tough humours about the throat, (*Strume*, the Phyſitian calls them, and ſince from this accident of their cure, *The Kings Evil*:) And, which was the greater miracle, obtained alſo the like wonder working power to be left inheritable by all his ſucceſſors. He raiſed that ſtately and magnificent pile at *Weſtminſter*, a Monument not onely of his own piety but alſo a repoſitory of the Monuments of Nobles and

Kings ever ſince, who quietly ſleep in that dormitory he re-edified and conſecrated to this uſe from Pagan ſuperſtition, and under his roof have found ever ſince their peaceable, ſafe, and everlaſting habitations: He was ſo zealous and ſucceſful for Juſtice, that when he was gone, the moſt people deſired, was but right his way; And as *Ziſcaes* Drum, (he being dead) charmed the enemy to obedience or flight; ſo the Conceſſion of his Laws ſtilled their mutinyes often, whence, at their importunity too, they have been continued in the Coronation oath ever ſince. Laſtly, his prudence diſcovered or acted it ſelf chiefly in this, that, (treading in the ſteps of K. *Knout* before,) he dreaded exceedingly all perillous innovations, and whatever wit or paſſion might ſuggeſt to the contrary, knew it was ſafeſt always hearkning to reaſon and going in the way had been trodden; and therefore adhered to this rule by choice, that whatever others did, He would only be wiſe in the way of his Anceſtors. To this purpoſe he cauſed to be ſearched, and by his authority reinforced the good old Laws of the Land, which, whatſoever forward men may deem to the contrary, is ſtill likelieſt to be the readieſt way to mens great deſires of Happineſs, Wealth, and Peace. For if Juſtice be the preſerver of order, that the parent of peace, whence wealth & riches follow: to diſturb the Law the foundation and rule of Juſtice, can be no leſs then to trouble the pure fountain whence thoſe precious ſtreams muſt iſſue; whereas to keep that faſt, is to hold the foundation ſure, whereon all the reſt either are or may be built. He then began not, but continued and confirmed this following order for tythes,

CAP. 8. *De decimis eccleſiæ reddendis, de ovibus et porcellis.*

De omni annona decima garba Deo debita eſt et ideo reddenda. Et ſiquis gregem equarum habuerit, pullum reddat decimum: qui unam tantùm vel duas habuerit, de ſingulis pullis ſingulos

Of all Corn the Tenth ſheafe is due to God, and ſo to be paid, &c. But the Engliſh hereof was given before, *pag.* 63.

les denarios: similiter qui vaccas plures habuerit, decimum vitulum: qui unam vel duas, de vitulis singulis obolos singulos. Et qui caseum fecerit, det Deo decimum: Si vero non fecerit, lac decimo die. Similiter agnum decimum, vellus decimum, caseum decimum, butyrum decimum, porcellum decimum.

De Apibus. CAP. 9.

De apibus vero similiter decima commodi. Quin et de bosco, de prato, et aquis, et molendinis, porcis, vivariis, piscariis, virgultis, & hortis, et negotiationibus, et omnibus rebus quas dederit Dominus, decima pars ei reddenda est qui novem partes simul cum decima largitur. Qui eam detinuerit per Justiciam Episcopi et Regis (si necesse fuerit) ad redditionem arguatur: (perhaps righter, *adigatur.*) *Hæc enim prædicavit Beatus Angustinus, et concessa sunt a Rege, Baronibus et populo. Sed postea instinctu Diaboli multi eam detinuerunt, et Sacerdotes locupletes negligentes non curabant inire laborem ad perquirendas eas, eò quod sufficienter habebant suæ vitæ necessaria,* &c. *Leg.* Edward. *Regis. apud Lambard. Archaion. pa.* 139. *& Spelman. Concil. pag.* 620.

Behold here a plaine law: as full as if it had been made in Conſiſtory, as clear as evident and open words could expreſs, as authoritative as might proceed from the King and his people, and as much to be reverenced as King S. *Edwards* Law: conſenting much to what went before, and for what followed after, we know (and ſhall be made appear) has had as many after, ſucceſſive, ſupreme confirmations as any publick act of this State ever had: Except the great Charter: nay, not except the great Charter; into whoſe confirmation this was alſo by implication involved, and with it had life, ſtrength, and fruit, even to the Petition of Right, as ſhall be hereafter ſhown.

It uſually paſſes that this devout and wonder-working King was the father of the Common-Law, (which if, we ſee what ſhined from its morning beames,) and that he gave it firſt life and being of no præexiſtent materials, as I beleeve he did, as it was common: for he, (a little to ſtep aſide,) diſliking the ſeveral ways of tryal that had been to his time,

That one ſhould be tryed by (1) *Saxon-Lage*, another by *Dane Lage*, a third after the *Mercian*: one puniſhed by (2) *gildwite*, another by *lawſlite*; neighbours, for the ſame offences, ſeveral ways, Amaſſed all both precept and penalty together under one general rule, and from the compoſition, indifferency, & uſe called the reſult by a fitting name (relating to whence it had come) the *now* (3) *Common-Law*: not but that the parts had been before, but he collected and imbodyed them thus, and from the compoſition and derivation gave this name. Juſt as the famous *Juſtinian* before, by help of *Tribonian*, *Conſtantine*, *Theophilus*, and others, winnowed the great (4) heaps of the former *Romane Civil-Law* and of the near two thouſand volumnes that had been 1400. (5)

(1) Camiani ſuas aliquando habuerunt leges, ſed cocuntibus iis & Saxonibus omnibus ſub Weſt-Saxonum ditione, horum lege vivitur. Angli lege uſi ſunt (quam vocant) Mercia donec irruentes Dani Eaſt Angliæ & Northumbriæ provinciis, ſuas inducunt conſuetudines, à prioribus non in complurimis diſcrepantes. Hinc majoribus noſtris triplex legum diſtinctio perpreaxna-laga, Wyncna-laga, & Dene-laga, id eſt, lex Occiduorum Saxonum, Lex Merciorum, & Lex Danorum. *Spelman. Gloſſar. pag. 445. in vocab. Lex Anglorum.*

(2) *Severall puniſhments or forfeitures for the ſame crime, among ſeverall here then living Nations. The former was the Engliſh mans, the other the Danes:* (12 *Ores, I finde it gueſſed.*) Vid. Gloſſar. ad Lambard. Archaion. p. ult. Selden *of Tithes*, cap. 8 ſect. 10. Spelman. Gloſſ. pag. 423. & Fœdus Edovardi & Guth. apud Lamb. Arch. c. 3 & 6 pa 42. *And compare with them* Spelm. Gloſſ. in vocab. Englecheria, pa. 231.

(3) Poſt Aluredum ſuas promunt leges Edovardus ſenior, Æthelſtanus, Edmundus, Edgarus, Ethelredus Saxones, & Canutus Danus, generales plerunque ſingulas quoad prohibitionis Canonem, ſed in irregandis multas Danos reſpicientes juxta conſuetudinem Danicam (quam Laſlit vocant;) Anglos juxta Anglicam; & Mercios interdum juxta Mercianam. Noluit verò Rex Edovardus Confeſſor in uno regno triplicem hanc juſtitiæ lancem, ſed receuſens denuò Anglorum, Danorum, & Merciorum leges, ſuam dedit parem omnibus, & Communem, quæ à Re, Lex Communis; ab Authore, Lex Sancti Edovardi nuncupata eſt. Ranulph. Ceſtrenſis: Ex tribus his legibus (inquit) Sanctus Edwardus tertius unam legem Communem edidit, quæ Leges Edwardi uſque hodiè vocantur. *Spelman Gloſſ pag. 436 in vocab. Lex Anglorum. Though* Gervaſe *of Tilbury refer the work to a little after, as done by the Conqueroor.* Porrò liber de quo quæris ſigilli Regii individuus eſt comes; (*that is*, Domus-Dei *Booke*:) Hujus autem inſtitutionis canſam ab Henrico quondam Wintonienſi Epiſcopo (*ſon to the Conquerours daughter*) ſic accepi. Cum inſignis Angliæ ſubactor Rex Wilhelmus, ejuſdem Pontificis ſanguine propinquus ulteriores Inſulæ fines ſuo ſubjugaſſet imperio, & rebellium mentes terribilium perdomuiſſet exemplis, Ne libera de cætero daretur erroris facultas, decrevit ſubjectum ſibi populum juri ſcripto legibuſque ſubjicere. Propoſitis igitur legibus Anglicanis ſecundum tripartitam earum diſtinctionem, hoc eſt, Mercheu-lage, Dene lage, Weſt Sexen-lage, quaſdam reprobavit, quaſdam autem reprobans, tranſmarinas Neuſtriæ leges, quæ ad regni pacem tuendam efficaciſſimæ videbantur, adjecit. *Gloſſar. ad Lambard. Arch. pa. 219. in vocab. Ius Danorum Agreement in ſubſtance for the Originall, Derivation, and compoſition of theſe Laws, though the circumſtance a little vary.*

(4) Sed cum omnia percontabamur, à præfato viro excelſo (Triboniano) ſuggeſtum eſt, duo penè millia librorum eſſe conſcripta & plusquam trecenties decem millia verſuum à Veteribus effuſa, quæ neceſſe eſſet omnia & legere, & perſcrutari, & ex his, ſi quid optimum fuiſſet, eligere. De Confirmat. Digeſt. in Princ.

(5) Erat enim mirabile Romanam Sanctionem ab urbe condita uſque ad noſtri Imperii tempora quæ penè in mille & quadringentos annos concurrunt ——— ——— in unam redigere conſonantiam, ut nihil neque contrarium, neque idem, neque ſimile in ea inveniatur, & ne geminæ leges pro rebus ſingulis poſitæ uſquam apparerent. *Ibid.*

years

years a laying together, ſifted out ſome little for his uſe, that gr eed with the Genius of his time and affairs, calling the Collection, his *New Digeſts* or *Pandects*, a *general Receipt*, or *All-receiving compoſition*; And as was intended, (and in part perfomed) here at the purging of the Canon-Law in the time of *Henry* the eighth, (upon the ſtriking of the Pope, the Head,) where it ſeemed good to the then wiſdom of the ſtate to limit by the prudent fiſhermen in the Goſpel, who collected and ſaved the good into veſſels, onely they caſt the bad away: Or as laſtly law-makers have almoſt a law to themſelves, to cull out no more then needs they muſt for rejection, the weeds and refuſe; reſerving all the good ſlips, and picking their poſie as near as they can of new flowers growing on old ſtocks formerly planted, and hitherto preſerved; ſo was done here. Our *Engliſh Juſtinian* (*Edward*) made his *new Digeſts* (the Common-Law) out of thoſe as it were *Prætorian Edicts*, *Senatus conſulta*, *Decreta Sapientum*, &c. of Britiſh, Engliſh, Saxon, and Daniſh pieces which had been before, and was eaſier to order then to new make, and uſurping to himſelf the power of a father, having digeſted it into his new forme, called the product his new Common-Law. Whence or from how far came thoſe pieces he thus made uſe of, would I beleeve prove a very hard queſtion and not to be ſatisfied fully, unleſs we could recover ſundry things utterly loſt; *Caput inter nubila condit*, as he ſaid of that river, their original is far among the clouds, and not to be revealed to us in any degree but from the things of *Mulmutius*, *Dunwallo*, *Qu. Martia* and ſuch other as being thought of nowhere elſe in the world but here, are yet with us wrapped up under very hard names. Yet for an *Eſſay*, and becauſe it hath not been attempted purpoſely by any, for varietyes ſake, Take as followeth,

Firſt, for granted, that, as before, the Confeſſour was but —— *Anglicarum legum legitimus reſtitutor*, as (1) an old book ſtiles him, the reſtorer, not the contriver of them; and a little more, that he had them from his Grandfather *Edgar*;

(1) Genetic. lib. 6. cap 9.

(1) *Edgar; from whose time they having been laid asleep (for 68. yeers) and buried as it were under the spoiles of war, long silenced by the Danish tumults, He, by the advise of his English Barons, revived, awakened, quickned, and gave new life and vigour to their dull and fainting power, and from the office of a friend, Guardian or protector got himself the reputation of an Author, or first Father, setting them towards that state they have in some measure continued in ever since.* But we begin not then: He (2) this *Edgar*, had them questionless from his most noble Anteceſſor the pious, valiant, and wise *Alfred*, who what he did was remembered (3) before, from *Ina*, *Offa*, *Ethelbert*, &c. to whose tendries he added what seemed fit of the Legislatives of West-Saxony: beyond which, and the fartheſt our inquiries go, and there they settle, must be the King *Mulmutius*, and the Queen *Martia*. These coyned what had after many following inscriptions, and stamping for currant Law, what had been hitherto but prevailing reason, or arbitrary opinion, made that first draught whereof we have now any remainder extant, and that I beleeve with many alterations and Re-Reformations hath continued topical and national to us ever since to this very day. Seemeth this a strange thing? I invented it not: Good authority hath led or misled me; take account therefore of each distinctly

First, for *Mulmutius*, *Geffry* of (4) *Monmouth* discovers of him, *That he was one of the first, that having sub-*

(1) Ex illo die (*from the fourth of the Conquerours Reign*) multa authoritate veneratæ, & per universum regnum corroboratæ & observatæ sunt præ cæteris patriæ legibus leges Edwardi Regis Sancti, quæ prius inventæ & constitutæ fuerunt tempore Regis Edgari; Verum post mortem ipsius dimissæ sunt annis circiter 68. &c —— Sed postquam Rex Edwardus venit ad Regnum, Consilio Baronum Angliæ legem 68 annis sopitam excitavit, excitatam reparavit, reparatam decoravit, decoratam confirmavit; Confirmata verò vocata est Lex Regis Edwardi, non quòd ipse primus adinvenisset eam, sed cum prætermissa fuisset, & oblivioni penitus dedita à diebus avi sui Regis Edgari, qui 17 annos regnavit, & qui primus ejus inventor dicitur, usque ad sua tempora, videlicet ut prædictum est 68 annos post dies ipsius Edgari, ipse Edwardus, quia justa erat, & honesta, à profunda abyssо extraxit eam, & renovavit, & ut suam observandam contradidit *Leg. Edovardi R. tit. Lex Neuscorum, apud Lambard. Archaion, pa. 139. & vid. Chron. Veruſt. Eccleſiæ Lichfelden. 16. pa 158. & apud Selden. ad Eadmer. Hiſtor. pa. 171.*

(2) *The Evidence of things speaks thus much to all that are acquainted with the affairs of those times.*

(3) *Pag. 56.*

(4) Et cum totam insulam omnino subjugasset, fecit sibi diadema ex auro, insulámque in pristinum statum reduxit. Hic leges quæ Mulmutinæ dicebantur inter Britones statuit, quæ usq; ad hoc tempus inter Anglos celebrantur. Statuit si quidem inter cætera, quæ multo tempore post. B Gildas scripsit, ut Templa Deorum & Civitates talem dignitatem haberent, ut quicunque fugitivus sive Reus ad ea confugeret, cum venia coram inimico suo abiret. Statuit etiam ut viæ quæ ad prædicta templa & civitates ducebant, Nec non & atria Colonorum eadem lege confirmarentur. In diebus itaque ejus latronum mucrones cessabant, raptorum sævitiæ obturabantur, nec erat usquam qui violentiam alicui ingereret. —— In urbe Trinovanto prope templum Concordiæ sepultus, quod ipse ad confirmationem legum construxerat. *Galfrid. Monum. Hiſt. Reg. Brit. lib. 2. cap. 17.*

duted

dued the Whole nation, rendred himself glorious by the lustre of a golden Crown, and made certain Laws, from him called the Mulmutian, which are preserved, (and the Authour lived since the Conquest, in some favour with *Robert* Duke of *Glocester*, King *Henrie's* son) *among the English to this day. Gildas* the *Wise* translated them into Latine along time after they were written; a part was; *That Temples and cityes should have priviledge of Sanctuary, and so the high-Ways leading to them, and the plough, &c. And having reaped much peace, the fruit of his diligence, he was buried in London neer the Temple of Love, quod ipse ad confirmationem legum construxerat.* The late (1) Dr. *White* of *Basingstoke*, his credit is ingaged for much the same, adding, that what *Guildas* translated into Latine, *Alfred* did into *English* to be a rule here, (of whose borrowing from times past we spake before:) and (2) *Ponticus Virunnicus* (living too on this side the Conquest,) ingages they were observed till his days.

(1) Mulmutius Dunwallo Rex ——aurea Corona primus usus est, & salutares leges quæ Mulmutiæ dicebantur instituit. Has in Latinum sapiens Gildas, & in Anglicanum sermonem postea Rex Alphredus convertit, adeò ut diu easdem etiam inter Anglos diligenter observatas fuisse constet. Quarum adhuc se è capita memorantur hæc, Vt Deorum templa, &c. *Richardus Vitus Basinstochius, Histor. lib. 3 pa 186.*

(2) Hic igitur (Dunwallo) est qui primus, &c. Et qui leges patriæ quæ Mulmatinæ dicebantur, instituit inter Britones, quæ usque ad hoc tempus celebrantur inter Anglos, *(so then from the Britaines to the English they came)* Vrbes, Templa fecit, ut qui ad illa fugerent, etiam coram inimico abiret, & viæ tutæ essent simili modo, quæ ad Templa ducebant, & ad arata colonorum: Postea mortuus est in urbe Trinovantum sepultus juxta templum Concordiæ. *Brit. Histor. lib. 2 in fine.*

Thus for the man: Now for the Noble and Masculine Queen *Martia*, the Loyal wife first, and after learned widow of King *Gunteline*, or *Guiteline*, (Remember both He and she lived before either the Conquest, Christianity (here) or Christs incarnation; Mulmutius under the second Monarchy of the Persians about 430. before Christ: and this Qu. *Martia* soon after:) *she was* (saith the same (3) *Geffry*) *both noble and wel learned in the Arts: Among other remarkable things she did, she invented that Law the Britains used under the name of Marcian*, (and from her no doubt might the Province of *Mercia* take name, a large tract of Land

(3) Erat ei (Guitelino) Nobilis mulier Marcia nomine, omnibus artibus erudita. Hæc inter multa & inaudita, quæ proprio ingenio pepererat, invenit legem quam Britones Martianam appellaverunt. Hanc etiam Rex Alurædus inter cæteras transtulit, & Saxonica lingua Pa March tec-lage vocavit. *lib. 3. cap 13.*

reach-

reaching from *Lincolnſhiere* to the heart of *England* as now, and formerly known by this name, as all know that are acquainted at that diſtance:) *which King Alfred among other tranſlated, and called Pa Marchitie lage*, as the print of *Geffry* hath, but the correcting (1) Manuſcript more fitly, Merchenelage, or Martian Law: and (2) *Pont. Virunnius*, (3) *Matth. Weſtminſter*, and (4) Dr. *White* come in alſo here with their ſubſidiary aſſents and confirmations.

(1) *In the publike Library of Oxford, in* 4 H. 27 Art.

(2) *Hiſtor. Britan. l.* 3.

(3) *Flor. Hiſtor. an.* 4 *cap.* 1.

(4)—Leges optimas à ſe nominatas, & diutiſſimè poſteà à Britannis obſervatas inſtituit, quas I. dem Rex Alphredus ſermone donavit Anglico, ut ante de legibus Mulmutiis demonſtravimus *Rich. Vtt. lib.* 3. *pag.* 199.

William of *Malmsbury*, (5) *John Stow*, and (6) *Polyd. Virgil*, have the ſame, or much after the ſame, And ſo not very like all would take up errour upon truſt one after and from another; But the true pedigree of the Common-Law may, from beyond this (7) Edward, derive it ſelf (in ſome parts at leaſt) thrice as far with ſhew and probability. So like is that I ſay elſe where, *There may be of Laws a Climatical fitneſs; They thrive beſt under ſuch an aſpect, and will hardly be pruned out: We have Native* ſome things, and theſe Connatural, with other, whence they continue the ſame upon endeavour of removal, and ſtill ſprout out again to a kind of immortality. This by the way: Now to return.

(5) *Chronic. ad an. ante nat. Chr.* 442. *& ad an.* 156

(6) *Hiſtor. Angl. lib* 1. *pa* 21, 22.

(7) Occurrit in Hiſtoriis mentio legis Molmutianæ & legis Merciæ, alias Martianæ. Illam à Molmutio Rege Britonum quem floruiſſe aſſerunt anno nondum elucentis gratiæ, 430. Hanc à Regina Martiana (Lelando Martia Proba,) Guentelini Regis vidua, dum infantis filii regnum tueretur, ferunt conditam, anno ante Nat. Chr. 350. Has duas leges (inquit Ceſtrienſis Monachus, *lib.* 1 *cap.* 50) Gildas Hiſtoricus tranſtulit de Britannico in Latinum: & Rex Aluredus poſtmodum de Latino in Saxonicum, quæ Marchene laga dicebantur. Ipſe quoque Aluredus legem Anglicè conſcriptam ſuperadjecit, quæ Weſt-Saxene-laga vocabatur. Tandem Danis in hac terra dominantibus tertia lex emanavit quæ Dane-laga dicebatur. Ex his tribus legibus Sanctus Edwardus tertius Communem edidit, quæ leges Edwardi uſque hodiè vocantur. *Spelman. Gloſſar. pa.* 441. *in Vocab. Lex Mercorum.*

Whether theſe things be of certainty enough or not, for the derivation of parts thus far, ſure enough what is generally received for the whole, that the Common-Law, as Common, fathers it ſelf on this King and S. *Edward*, as before; He made of ſeverals this one intire Body, wherever he had his pieces; And ſo in this if we have it, we have not onely *Law*, but to (create ſure right in Temporals) *Secular Law*, *Common Law*, this our ſetled and long continued all-ruling, all-

diſpoſing

disposing Soveraign *Common Law*, and this in the infancy, life, vigour, and most powerful strength, and chief ruling, *Raigning power* thereof; and all this for what many take to be no other then some tyrannical imposition of some latter statute; yes so indeed, we have the morning beames of this *Soveraign light* to quicken to best and strongest most assured Right, *This Right of Tythes*; Let more or as much be shewed for almost any thing in this Kingdom or Commonwealth.

The highest other titles pretend to, or shelter themselves under, is but under the Conquerour; the most goe not so far, and they are thought to ayme at a very great distance that can but look thitherward; Insomuch that it became (1) a doubt long since whether any Plea founded of right beyond, were to be hearkned to? and though the truth seems, it was, and many enjoyed on this side, what they had on the other, and had not forfeited by stubborn opposition; yet an excellent Scholar (*the Aristotle of our Nation,*) and a (2) professed Lawyer, seems to give his opinion to the contrary, *That save Church-lands, and those in Kent, all else had their rights drowned in that deluge, and save what was saved by mercy, the rest then perished*: But now behold here not onely a present and ancient title, but founded in the Common Law, and so long since as makes it to have overlived clearly that bloody battel; Planted there in words at length, by the composer himself of that Law, and so fully too as few things else are, and so by consequent, from the very beginning has a fairer, farther, deeper, and more spreading radication in the inside and body thereof, (as 'twere clasping in almost to another hemisphære,) then most other lands, tenements, hereditaments, &c. can pretend to. (3) *A tempore coronationis Regis H. patris Regis E.* was long since a good Plea, From the Coronation of *Henry* the third. And in (4) *Henry* the third's time, *from his granfather*: But here is that overlookes those clearly, double and treble, *From the Conquerour and before.* What can, if this cannot, settle a thing by Law? to have its title thus written by the *Founder Himself*, in cleare and evident Characters, even in the infan-

(1) *Vid. Seld. of Tythes. Review of Chap 8.*

(2) Chancell. Bacon. *Of the use of the Law,* pa. 23. *And see also the Preface to* Hen. 1. *Laws, late set forth by Sir* Roger Twisden, pa 155.

(3) *Flet* 4. 5. 14

(4) *Bracton fol.* 373.

cy and the very face of the Common Law.

And here then before we go any farther, let us a little ſtand ſtil, and veiw the way we have gone, & what we have gained as 'twere in another world, before & beyond the Norman turn. Sure *a Right*; *a firme Right*: a legal, undoubted, publike, *Civil Right*; as good as any had, as good as any could have, what grant and aſſurance could make over, and that publike and ſtrongeſt. What is that we own any thing by but agreement? publike convention! πόλεως δὲ συνθήκη κοίνη, as (1) *Marcian* the Civillian ſpake from *Demoſthenes* the Orator! which is that alone parts intercommoners, and is the bottome every ones Own reſts upon: Now and this ſtands as full under, as powerfully and vigorouſly ſupports theſe thus apportioned Rights, as any other ſeparate parcels whatſoever, we have made it appear ſo in thoſe days. I look upon the Common Law in a twofold ſtate, of growth, and perfection. 1. As an Embrio preparing to ſome thing, in rude and imperfect pieces. 2. As a child, like to be a man, formed to a being, and of ſome preſent power, and abilities. In each of which we could expect no more to appear for tythes then does; for whether we regard thoſe native and as it were connatural genuine Laws of our Country as having diſtinct force, or as after amaſſed together into one community; the Several parts, made after into the Common Law, or the Common Law made out of thoſe ſeveral parts, ſtill, in All, tythes had a clear full mention and grant, And this to the Baptiſme of *John*, from the beginning of Any Baptiſme in this Nation. We have donation, wee have confirmation; wee have Law, we have penalty; we have Thou ſhalt pay, or, thou ſhalt be puniſhed if thou do not pay: King *Etheldreds* Law, King *Ælfwolds* law, King *Offaes* Law, King *Æthelwolphs* Law, and alſo the noble *Alureds*, the moſt glorious Founder of our ſtate, and government. King *Edmonds* Law, King *Ethelſtanes* Law, K. *Edgars*, *Knouts*, the Confeſſors, and whoſe not beſide the Parliament at *Ænham*, & other Parliaments, Princes, Peers, People, Lords, Synods, Senates, What not? and all from as undoubted monuments of truth and aſſurance, as any the times do affoord: He that will doubt theſe

(1) F. de Legibus Senatu'que. L. Nam & Demoſthenes.

theſe may as well doubt any thing: whether thoſe men were? whether theſe Princes raigned? whether there were an Heptarchy, and the wrangling, waſting, conſuming parts did at laſt *coaleſcere* into a mutually preſerving Monarchy? We have but credit of ſtory and record for theſe, and ſo for them, and indeed for one part, as well as another.

CHAP. XVII.

COME we next on this ſide the bloody battel, and Sanguelac conveys us over to no leſs aſſurance or clearneſs of ſtrength on this ſide that ſtrangly ſucceſsful invaſion. Non-revocation is firſt aſſured: for who ever heard of ſuch a prevailing vote as this ſince the Conquerors dayes, quickned to life and power, that no tythes ſhould be paid; Then for poſitive confirmations we have many: Ever and anon ſome new ſinews of ſtrength having been added to thoſe were before, and repeated aſſurances of them comming in ſo thick and plentifully that they had need for their multitude to be ſorted into parcels to avoid confuſion.

1. And whereas of K. *Edwards* Laws Tythes were a part, as but now, our firſt ſearch would be therefore, what notice and allowance is of Them, and Tythes in Them.

2. Next when and how the Conſiſtory was erected, with its lawful powers, the proper ſcæn where theſe dues had motion and tranſlation both as to ſtating their right and helping their Recovery.

3. What were the Collateral impreſſions of ſtate in this interval, chiefly ſince the beginning of the printed ſtatutes; as in *Magna Charta*, *Articuli Cleri*, *Circumſpectè agatis*, &c. to the Petition of Right.

4. What is elſe abroad of Private ſtamp, but Publike allowance, as among the great Lawyers, *Cooke*, *Fleta*, *Bracton*, S. *German*, *Natura Brevium*, Book of Entrys, &c. On

each of which heads is like to be found at leaſt ſomething and all hoped will be abundantly enough. In any whereof yet we ſhall not ſo much tie our ſelves to follow our method as our buſineſs, rather chuſing to let our matter lead us, then we forcing it; and always eſteeming our method ſuch a line of our own making, as that the compaſs thereof we may at any time without offence upon occaſion tranſgreſſe.

Firſt then to *King Edwards Laws*, renewed, repeated, confirmed, and ſworn as they were, (a good part of the accompt that is of thoſe are very ancient being ſpent in the mention of them,) and ſome wonder it is to ſee and conſider for ſome Ages how peoples hearts were not ſo much bent towards, as ſet upon, and wedded to them. Fickle men! that uſe to love and hate in a breath; with no more conſtancy then the winde blowes from ſuch a ſet point of the Compaſſe, Now for this, and Then for that; Yet ſuch was their Immutable and Immortal love to their *Avitæ Conſuetudines*, as they called them, that they would not admit of any divorce from them; the ſword of a Conquerour could not terrifie from their embraces, and any reſtraint for a time did but quicken their appetite & awaken & inrage their thirſt to call for them ſo much the more earneſtly after, & indeed undeniably. It was harder to conquer Theſe then the whole Nation beſides: The peoples hearts were ſoon quieted or ſubdued by one great Battail and a few other: But their affection to theſe was ſuch, that ever and anon they were up in bloudy Inſurrections; They would not be denyed their *Laws* upon peril of their *lives*, and ſtill whatſoever bonds of agreement were made, none would hold; whatſoever peace was agreed on, none would laſt and be firm, unleſs Theſe *King Edwards Laws* were the ſoder and braces as it were to keep all from falling back again to factions and fractions. So in K. *Williams* time, ſo in *Hen.* 1. & *Hen.* 2. So in K. *Johns*, ſo in others, till they were planted in the Coronation Oath, and there I believe lately they were in the laſt that was taken.

See of K. *William* firſt, whoſe Laws bear this title:

The

The (1) Laws of good K. *Edward* which *William* the Baſtard afterward confirmed.

(2) The firſt *Chap.* After the Conqueſt of *England*, the ſaid *William* in the 4 year of his reign, by the advice of his Barons, cauſed through all the ſhires of *England*, the Nobles and other the (3) Wiſe-men and Lawyers of the Land to be ſummoned, that of them He might know what their Laws & Cuſtoms were: Theſe being met, twelve of every ſhire; and having firſt taken their Oaths to deal ſincerely, not turning to the right hand or to the left, adding nothing, detracting nothing, changing nothing, began with the Church: *Quoniam per eam Rex & Regnum ſolidum, ſubſiſtendi habent fundamentum*; Becauſe this was the Baſis and firm ſettle whereon all the Reſt was ſeated, and her Laws and Liberties were (they ſay) as followeth;

2. Let every Clerke and Scholar, and their poſſeſſions whereſoever, have the peace of God and the Church: And ſo on to the eighth Chapter; for every tenth ſheaf, tenth foſe, tenth fleece, &c. as before, which is the (5) particular Law we ſeek for here. That which might occaſion this ſtrict Survey, may have been, when he ſaw what was, to ſuperinduce or conjoyn his Norway orders; (6) As well becauſe they were his, and he was willing to govern by his Own, as becauſe they were better and honeſter, as he pretended; But chiefly for that their admiſſion (7) would have removed one rub which lay in his way, and hindred the evennes of his path to the Crown by ſucceſſion, which was his unfitneſſe thereto by reaſon of his illegitimation; which,

(1) Leges boni Regis Edovardi, quas Gulielmus Baſtardus poſtea confirmavit.

(2) Poſt acquiſitionem Angliæ præfatus Rex Angliæ Gulielmus, quarto anno regni ſui, Conſilio Baronum ſuorum fecit ſummoniri per univerſos Angliæ Conſulatus Anglos nobiles, ſapientes, & lege ſua eruditos, ut eorum leges, & jura, & conſuetudines audiret. Electi igitur de ſingulis totius patriæ Comitatibus viri duodecim, jurejurando coram Rege primùm confirmaverunt, ut quoad poſſent recto tramite incedentes, nec ad dextram nec ad ſiniſtram divertentes, legum ſuarum & conſuetudinum ſanctia pateſacerent, nihil prætermittentes, nihil addentes, nihil prævaricando mutantes. A Legibus igitur ſanctæ matris Eccleſiæ ſumentes exordium, quoniam per eam Rex & Regnum ſolidum habent ſubſiſtendi fundamentum, leges, libertates, & paces ipſius concionatiſunt, dicentes.

(3) Omnis Clericus, &c. *Lambard. Arch. pa.* 138. *Spelman. Concil. pa.* 619.

(4) *See M.* Seldens *Review of Cha.* 8 *Of Tythes, pa.* 982.

(5) *And the ſame limb is alſo of the ſame body, but under another head, as if the whole compoſition were* Glanvils, in Hoveden. Annal part. poſt pa. 600.

(6) Proferebat enim quod anteceſſo es ejus, & omnium Baronum ferè Normannorum, Norwegienſes extitiſſent, & quod de Norweia olim veniſſent. Et hac authoritate leges eorum cum profundiores & honeſtiores omnibus aliis eſſent, præ cæteris regni ſui legibus aſſerebat ſe debere ſequi, & obſervare. *Lambard. ubi ſupra p.* 149. *& Vid. Spelman. Goſſar pa* 436. *& Chron. Luchfeld. apud Lambard. pa.* 158.

(7) Selden. *ib. pa.* 484.

as

as Laws were here under the Church, ſcarce left him in a ſucceeding condition (to his Couſen *Edward*, for he entred not meerly by Conqueſt,) whereas the Northern were in this regard more pliable and favourable. But when (1) the people heard hereof, their rage was up preſently, their ſwords by their ſides, and ſpears in their hands, beſeeching *they might not be ruled by they knew not what*; and when he denyed, reinforced their bold requeſts, conjuring him by *S. Edwards ſoul, who left him the Kingdom*, (and this was a part of his title, glanced at before,) *and whoſe the ſo much deſired Laws were, that he would not force a yoak on them they were not able to bear, and like to gall their necks ſo much the more, becauſe they knew not how neither to wear it.* This he had in part (2) promiſed before to the two greateſt of the Hierarchy of *Canterbury* before they would lay down with their boughs their ſwords, but ſoon forgat his words as Conquerours uſe to do; But howſoever now no remedy, He muſt yeeld, and did once for all: *Thomas* of *Cant.* and *Maurice* another Biſhop, writing them out with their own hands, and ſo they were taken up, *Decima Deo debita*, with the reſt, and they ſhall be now obſerved for ever. Such they may be, it is harder to conquer Laws then Men, and rooted uſages having had time to ſpread and like, may contract ſuch a kinde of Connaturality with the place by conſent, that though a generation of men may be cut off, Theſe will not. I will not ſay, There is a Climatical fitneſs, and in ſuch a place ſome love to grow; As of other things, There do influences produce and cheriſh, what being There proſpers, being Away languiſhes, being removed ſighs out fainting deſires to return, like the Vine that by the Elme thrives beſt, (yea, mutually they cheriſh each other,) or the plants of *Trinacria*, which when that Iſland was cut off from *Italy*, (as ours thought from *France*) reclined lovingly back to the place from whence they had been taken.

(1) Quo audito mox univerſi compatriotæ Regni qui leges edixerant, triſtes effecti, unanimiter deprecati ſunt, quatenus permitteret ſibi leges proprias, & conſuetudines antiquas habere in quibus vixerant patres eorum, & ipſi in eis nati & nutriti ſunt, quia durum valde foret ſibi ſuſcipere leges ignotas, & judicare de eis quas neſciebant. Rege vero ad flectendum ingrato exiſtente, tandem eum proſequuti ſunt deprecantes, quatenus per animam Regis Edwardi, qui ſibi poſt diem ſuum conceſſerat coronam & regnum, & cujus erant leges, &c. *Lambard. Vbi Supra.*

(2) *Vid. Tho. Spot. prout citatur in Gloſſar. ad Lambard. Arch. pa. 222. in vocab. Terra ex Scripto. & Speed. Hiſtor. lib 9. cap. 1. ſect. 8. in Wil. 1.*

No

No (1) poiſoned thing, they ſay, will live in *Ireland:* Creatures, their very nature is (2) troubled, and they like to degenerate, when they change ſoil and climate: Some Northern Beaſts are reported to alter (in time) removing to the South, and when from us to any other Countrey, againſt reaſon, yet more: As things, may not then Laws naturally love ſome Countreys, deſire to be there, proſper in that Region beſt, and thitherward therefore recline being ſeparated? bewraying a kinde of ſympathy with the place, by that the place ſeems to want them, and they deſire and make to it, reſting and having a ſtrange kinde of complacency and delight (mutually) in that approximation! Many things we ſee we can give no reaſon of: but we Do ſee and know Native Laws ſettle (as in love) towards ſome places, Ours alſo ſo paſſionately called for Here, as to a deſpite of oppoſition, a ſcorn of denial; May there not then be a kinde of ſympathy, and Connaturality of Them with Us, we underſtand not?

(1) Nullum ibi reptile videri ſoleat, nullus vivere ſerpens valeat. Nam ſæpe illò de Britannia allati ſerpentes, mox ut proximante terris navigio, odore æeris illius adtacti fuerint, intereunt. Quin potius omnia penè quæ de eadem inſula ſunt, contra venenum valent. Denique vidimus, quibuſdam à ſerpente percuſſis, raſa folia codicum, qui de Hybernia fuerunt, & ipſam raſuram aquæ immiſſam, ac potui datam, talibus prorinus totam vim veneni graſſantis, totum inflati corporis abſumpſiſſe ac ſedaſſe tumorem. *Beda. Eccleſ. Hiſtor. lib. 1 cap. 1.*

(2) *The Indian Oxnees, What be they but extraall from the Cats of Europe? Spaniſh dogs, in New Spain, in the ſecond Litter do they not become Wolves? Good Melons tranſplanted into a baſe and barren ground, turn quickly to ordinary cucumbers. So there (in Carmannia) the Iackals may be of the dogs of Europe, by diverſity of air, and ſoil varying in ſpecie from that they were formerly* Herb. Trav. pa. 124 in Carmannia.

Well: this formal Conceſſion was upon this importunity howſoever made, but how kept? M. *Foxe* (3) ſays the truculent ſoldier feared not to perjure himſelf: (whence we learn, he had ſworn:) Upon which endeavour of revocation, the people were ſoon up again (4) under *Edgar Etheling*, *Englands* Dearling as they called him, *Fretherick* The ſtout Abbot of S. *Albanes*, and *Aldred* Bp of *York* being their Chief Councellours, *Edwin* and *Morcar* their Chief Generals. Theſe would not bear their forced change of Laws; though Governours they ſtuck not ſo much at, neither was there any remedy but gratifie their diſcontents with a re-Conceſſion. The King enters parley with them at *Berkehamſted* in *Hartford* ſhire, where loth to hazard by the chance of an houre, what he had got not without the expence of bloud, treaſure, and

(3) *Martyrol. in the Life of Will. 1. pa. 171.*

(4) *Speeds Hiſt. lib. 9 cap. 2 ſect. 21 Selden. ad Eadmer. hiſt. pa. 194.*

and ſo long continued induſtry; He condeſcends to hearken, as *Rehoboam* ſhould, to his wiſe Councellour (the Arch-Biſhop of *Canterbury*) to yeeld to grant what 'twas dangerous to deny, and to be pliable for once to thoſe muſt be his ſubjects for ever: *Non tam libenter itaque quam ſapienter*, (1) as was ſaid of him in another caſe, not ſo much willingly as wiſely he made Conceſſion, and being alſo of carriage fair, and of ſpeech courteous, he ſo wan upon the old Abbot *Fretherick*, and all that were with him, that they were again content to put their neck into his yoake, ſo it might be the gentle one they liked of K. *Edwards* making. So ſaid, ſo done: an agreement was thus made which ratified by Oath and vowed upon the reliques of S. *Albane*, All were ſatisfied, and every one went to his own home. Though this were not the onely time or courſe of affairs that brought about the eſtabliſhment of theſe loved decretals: Elſewhere alſo they were put into (2) K. *Williams* Code, which willed them to be ſtrictly kept by all, with onely ſome additions in favour of the Engliſh, as in the Red Book of the Exchequer, lately publiſhed. Next him was *William* 2. of whom we have little account, but very like his truculent nature would put on for a return of his fierce Norway uſages. More then like he did; for at the coming in of his Brother *Henry*, He was fain (3) to ſtroak the people with a promiſe to releaſe their heavy burdens, and that all things introduced contrary to K. *Edwards* Laws, ſhould be removed, with a Re-Receonceſſion of them in their full force and vertue. (4) A Monk of S. *Albanes* who was likeſt to know, tells us: *He ſooths the headleſſe people, deſiring he might be their Governour, and all hard Laws ſhould be amended*: They ſpecifie, *that if they might be S.* Edwards *Laws, and he would allow them by his Charter* (after made out into the great Charter no doubt) *they would ſtick to him againſt his elder Brother* Robert,

(1) *Thor. Spot. Vbi ſup.*

(2) Hoc quoque præcipimus ut omnes habeant & teneant leges Edvardi Regis in omnibus rebus, adauctis his quas Conſtituimus ad utilitatem Anglorum. *Lambard. Arch. pa. 172. l. 63. Selden. ad Ædmer. not. pag. 192.*

(3) *Eadmer. Hiſtor. Non. lib. 3. pag. 55.*

(4) Promiſit emendationem legum, quibus oppreſſa fuerat Anglia tempore patris ſui & fratris nuper defuncti; —— Adhæc Clero reſpondente et magnatibus cunctis: quod ſi animo volente ipſis vellet concedere & Charta ſua communire illas libertates & Conſuetudines antiquas, quæ floruerunt in Regno tempore ſancti Regis Edwardi, in ipſum conſentirent & in Regem unanimiter conſecrarent. Henrico autem hoc libenter annuente, & ſe id facturum cum juramento affirmante, conſecratus eſt in Regem apud Weſtmonaſterium, &c. *Matth. Pariſ. ad an. 1100. p. 51.*

Robert, *now in the holy Wars at a distance.* With all his heart; for he must, or no Crown: So he swore them presently, and was not after worse then his word: for he soon directed his Letter to the Sheriffe of every Shire, acknowledging his Election, and confessing oppressions past, and promising relaxation to come, grants the *Church her liberties*, &c. and that *all ill customes should be amended*, &c. And coming to particulars, *that all past murders should be pardoned, and future tried by K.* Edwards *Law*, He after reaches in the whole: (1) *The Law of K.* Edward *I restore you*, saith he, *with all amendments made by my Father with the consent of his Barons:* which is the more like to be true, because besides this private Authour, there is agreement of the publike Tables in two Copies (with some small variation,) in (2) the Books of the Exchequer, (3) the title of whose second Chapter is, *De Confirmatione Legum Edwardi Regis*, as if that were the onely businesse. Afterwards *Robert* came home, and they parlying of the great business (4) at *Northampton*, fearing the peoples revolt, he knew no better means to retain them, then by pleasing them with sugared words, telling them, *His Brother was a Military man, He addicted to Peace: His Brother a new-comer, Himself known to them: The stranger was like to prove truculent, as arriving to them with his hands bloudy from* Syria, *but He had granted them King* Edwards *Law, had sworn it them, had kept it them; It was his joy to remember the day when that firm and pleasing bond of friendship was contracted between them first, Which also he wish't everlasting: And if they list to desire any thing more in the same businesse, they need but ask and have*; and thus were they inchanted to be his, almost against Justice: *Parva leves animos capiunt*; Good words go far with the multitude.

(1) Lagam Regis Edwardi vobis reddo, cum illis emendationibus quibus pater meus eam emendavit Consilio Baronum Angliæ. *Id. ib.*

(2) *Lately published and annexed to Lamb. Arch. p.* 175.

(3) *Ib. Pa.* 176.

(4) *Matth. Par. ad an.* 1106. *pa.* 59.

At King *Stephens* coming to the Crown, we finde not much, but (5) *he swore the Liberties of the Church, and gave Charter of them*, &c. (6) *He promised to reform the over-hard Laws of his Predecessors, and to mollifie extreams under his Seal and Charter*: which words consider-

(5) *Id. in vita Stephan. Reg. in prin. pa.* 71.

(6) *Speed Hist. lib.* 9. *ca* 5 *sect.* 3.

red, ſeem much of the import with the (1) former. But before his reign was out, (2) the *Londoners* were up, and made earneſt requeſt to *Maud* the Empreſſe, then, it ſeems, recovered to ſome power, and gotten thither, that theſe Laws of K. *Edward* might be reſtored expreſſy: *quia optimæ erant, & non patris ſui Henrici, quia graves erant*: whereunto ſhe giving an unadviſed anſwer, there roſe preſently ſuch a ſtorm of mens paſſions and arms both together, that ſhe was glad, with diſgrace enough to leave the Town, without taking ſo much as her Trunks along with her. In *Hen.* 2. (her ſons) time, *R. de Glanvilla* was made Chief Juſtice. His Book intituled, *Tractatus de Legibus & Conſuetudinibus Angliæ tempore Regis Hen. 2. compoſitus*, has, for reaſons I ſhall alledge hereafter more ſeaſonably, little of Tythes, Nothing of King *Edwards* laws, as that Book is come to us: But (3) to the ſame *Henry* as Authour, and the ſame *Glanvil* as under him Compoſer, are aſcribed this very Body whereof I ſpeak, and under the ſame Head given by *Ro. Hoveden* the Hiſtorian; Though he was yet, I take it, but the (4) Compiler of them.

But now in K. *Johns* time aroſe thoſe terrible tempeſts, were like to ſhake and overwhelm all, the noiſe whereof was heard all over Chriſtendom; Neither was there any appeaſing the ſtorm, or ſettling toward peace and quietneſs, but by ſo far as theſe Laws had approbation. *Matth. Paris* (5) tels us, *that at the end of ſome broyles, when the King was abſolved at* Wincheſter, *he ſwore upon the holy Goſpels that he would defend the Church and Church-men, &c. and revive all good Laws, eſpecially King* Edwards, *abrogating all that were unjuſt*: which I take it, was done not long after at S. *Albanes*, when peace was reſtored to all, and on behalf of the King commanded, that the Laws of (6) his Grandfather *Henry* (of him we had but now) ſhould be obſer-

(1) *And* Will. Malmsbury *taking of* K. Couts *ſeverity, and picking from* K. Ethelreds *Laws, and ſtruſting them, whereof before:* In quarum Cuſtodia (*ſaith he*) etiam nunc tempore ſub nomine Regis Edwardi juratur, non quod ille ſtatuerit ſed quod obſervaverit. *De Geſt. Reg. Angl. lib 2. cap 11. pa 75. He lived in the* K. Stephens *time.*

(2) *Florent. Wigorn. in Gloſſar. D. H. Spelman pa.* 440.

(3) Videturque Hovedenus leges Edovardi Confeſſoris à Guilielmo emendatas, & ab Henrico ſecundo denuò reſtitutas, reſtituenti attribuere. *Id. pa. eod col.* 2.

(4) *Vid. Hovedan. Annal. part. poſter. ad an.* 26 *Hen.* 2. *pa.* 600.

(5) *Ad. an.* 1213. *pa.* 229, 230.

(6) *This was, being ſtrictly taken,* Henry *the ſecond: but a judicious Conjecturer rather* Joſtens it on Hen. 1. *as if it were,* Proavi ſui. (*Spelm. in Gloſſ. pa.* 436.) *which is the more likely, becauſe this was word for word that* K. Iohn *ſware, and is here found remembred and recited: as may be ſeen in* Matth Paris.

obſerved, and all hard Lawes repealed throughout *England*: which when after upon diſpleaſure it was endeavoured to be revoked, the Archbiſhop follows the King to *Nottingham*, and ſo deals that that unjuſt purpoſe was revoked; and after, having found a Copy of *Hen.* 1. Charter (of which before) He takes aſide many of the *Peers*, and thus beſpeaks them: *Ye may remember what was done at* Wincheſter; *How I abſolved the King, and he ſwore to revive and preſerve K.* Edwards *Laws: I have lighted upon a Copy of them; here it is, Hear it read, and let us make our ſelves happy once for all by a combination that it Shall be obſerved.* Hereupon he produces the Charter, word for word, the ſame as from *Hen.* 1. even to the particulars of a double mention and confirmation of K. *Edwards* Laws; and having read it and ſworn to it and the Combination together, by the next (1) news we hear of K. *John*, he is like to turn Mahumetan to ſhift himſelf of thoſe troubles his inconſtancy to theſe good Laws had wrapped him in. Nor ended the buſineſſe ſo: (2) The year following was a great meeting at Saint *Edmundſbury*, to force the King again to make good the liberties and (3) thoſe Laws: ſoon after *Chriſtmas* the year following, they come boldly enough upon him and demand the obſervation of them, and performance of his promiſe; when he craved time to deliberate, and meant but to delay, they ſmelt it, and aſſembled a great Hoaſt at *Stanford*, and coming after to *Brackley*, where they had a parley, offered a Schedule of their demands, containing *the old Laws and Cuſtomes of the Land*, and thoſe are (4) after ſaid to be partly *out of K.* Henries *Charter*, (of which before) *and partly out of K.* Edwards *Laws ſtill*. So that thus far plain and even way till among the Charters, and in Treaties and Conſultations, Acts, Orders, Grants, and Demands, ſtill theſe were a conſiderable part, the onely ſoder to combine the diſagreeing parts, of the brittle body Politique; and when the rage and fury of the people was up, nothing was ſo effectuall as this, like cool water to ſprinkle upon their raging fiery paſſions; Stroak them with a Conceſſion of theſe, and they were calmed preſently. I confeſs we are

(1) *Id. pa.* 233.

(2) *An* 1214. *id. pa.* 243.

(3) *They produced the Charter.* Continebat autem Charta quaſdam libertates, & Leges Regis Eadwardi Sancti, Eccleſiæ Anglicanæ pariter & Magnatibus conceſſas, exceptis quibuſdam libertatibus, quas idem Rex de ſuo adjecit *ib.*

(4) Capitula quoque legum & libertatum quæ ibi Magnates confirmari quærebant, partim in Charta Regis Henrici ſuperius ſcripta ſunt, partimque ex legibus Regis Eadwardi antiquis excerpta. *Id pa.* 244.

yet ſhort of *Hen.*3. whoſe was the ratification and renewed allowance onely, not firſt grant of that our preſent laws take chief notice of, by the name of *The Great Charter*; But withall it is to be obſerved, that This was chiefly an extract of Thoſe, and that which K. *John* confirmed by Oath, and his Barons contended for, and would not be denyed to have made good in Deed, was but *Hen.*1ˢ. Of which one that had ſearched and was like to know, tells us: *Verè* (1) *itaque hæc* (Henrici 1.) *dici poteſt baſis & fundamentum ipſius Magnæ Charta, quæ ex parte maxima leges antiquas & Regni Conſuetudines continebat, quamque* Hen.3. *non confirmavit antequam per milites* 12, *vel legales homines uniuſcujuſque Comitatus per Sacramentum inquiri feciſſet quæ fuerant Libertates in Anglia tempore Henrici avi ſui.* So the Great was but taken out of the other Charters, renewing (with ſome variation) what they had granted before, and there is urged authority for that derivation, which their compariſon and conſent will well enough make good. Thus having brought theſe Laws among the Charters, thorough them, and to the laſt and Great; They now with eaſe and pliableneſs enough come along and have a place in the Petition of Right, where That was owned ſufficiently, and as many Ratifications as there were intercedent, even Parliamentary, ſo many muſt be acknowledged to fall in by the way (at leaſt by implication) Hither: Of that great Law of Tythes I mean, which having ſo fair and eminent a place in K. *Edwards*, muſt alſo have as full and frequent a ratification all along in that bulk of laws ſo ratified, which juſtly occaſioned this Narrative; And by it we ſee a a part of that ſtrength the Law of Tythes hath on this ſide the Conqueſt, even in the Common Law ſtill, by that it was part of it at firſt, and a very remarkable part of that is taken to have been the foundation and firſt riſe of the beginning of the Common Law, and ſince hath, as now, been ſeen, allowed, and approved with it all along, with impetuous rage and violence called for by the people of the land, and they would never be quiet but under this Regiment, or without theſe beloved orders whereof Tythes were a conſiderable and

(1) *Sir* Roger Twiſden, *in his Preface to the Laws of* Will.1. pag. 157. Cook *has the ſame in his margi. nall notes on the Charter in his* Inſtit. 2 cha 1.

and eminent part. If they had been preſſed upon them by thoſe were intereſſed by profit, or the tyranny of command from above had ſettled, or kept them upon their weak and declining ſhoulders, as unwilling as unable to bear, Reaſon would there ſhould be at leaſt ſome more colour of ſtrugling to free themſelves from the force, and their hands have leave to looſe their necks from the yoak of unjuſt impoſition; But ſith they deſired them, beſpake them, contended for them, and would not be denyed, but fought that they might pluck and keep that Burden upon themſelves; what can be more equall then that as their own act binde themſelves, ſo their inheritours and ſucceſſours alſo, and that whether to gain or to loſſe, yea, to loſſe as well as to gain, they ſtand to them, and every good man with his own whether Act or Right, ſit down and Reſt ſatisfied and very well contented?

Moſt things indeed finde ſome oppoſition; few are ſo happy to eſcape altogether free, and ſome Perſons may perhaps think good to doubt of All here: As, *whether theſe references diſperſed and repreſented as before, point to King* Edwards *Laws, or ſome other? Which latter If, All hitherto would ſeem beſide the Cuſhion.* But in anſwer would be conſidered, 1. That no ſuch thing appears as miſ-application, neither are other with much probability ſuborned in their place. 2. The title, the old title, and that from as far as *Roger Hovedens* time, ſpeaks for them, and plain, *Hæ ſunt leges boni Regis Edovardi, &c.* 3. Divers paſſages alledged, glanced at, and extant beſide can hardly be underſtood but to contribute the ſtrength of their Teſtimony this way. 4. To this alſo the likelieſt guides have led us: M. *Lambard*, in his Edition; M. (1) *Selden*, in his Allegations; (2) D. *Tildeſley*, (3) Sir *Henry Spelman*, (4) Sir *Tho. Ridley*, and of late (5) D. *Wheloc* of Cambridge. Could all have been miſtaken? Were they all in the wrong? Shall we take in a point of doubt the whole world of Learned men to be nothing elſe but a flock of ſheep, wandring from the truth themſelves, and leading others unto errour that follow them? Take what we finde: They are generally reputed *His*, clearly ſtyled *His*, have continued to be reputed and ſtyled ſo *long enough*,

(1) *Hiſt. of Tythes cha* 8. *pa* 224.
(2) *Animadverſ. on that Chap. pa.* 164.
(3) *Concil. Tom.* 2. *p.* 620. *and of Tythes, chap.* 17. *pa.* 131.
(4) *View of the Eccleſ. Laws, Par.* 3 *chap* 2. *ſect.* 1. *pa* 111.
(5) *In his late Edition of M.* Lambard, *Archaion. Anno* 1644.

enough, and nought appears clear to *the contrary*; and Why Then may we not Therefore embrace them for *His, and Genuine*, crediting the voice of the world? Which how, and why taken into the Coronation Oath, we may by these things, as they were, in part also conjecture. But of this hereafter, or as shall be occasion: In the mean time, of them, and of this Branch of Tythes in them, Thus much.

CHAP. XVIII.

STEP we next into the Church, but by degrees, and taking in some such things by the way, as could not have found so fitting place elsewhere: As namely,

1. Remembred be it, that Tythes were payed under the Conquerour: They were so; For as well (1) M. *Selden* hath it in divers particulars from the most authentique account of this Lands Survay represented in *Domus-Dei* Book, (others agreeing, and enlarging his proof:) As (2) *Matth. Paris* consents, in thus relating a dismal Tragedy acted under *William* the first, about forcing Priests from their wives; *They*, saith hee, (the Priests) *grew scandalous, the people rose up against them, Lay-men fell aboard with the Sacraments, Any would administer Baptism, and then went Tythes to wrack: Decimas etiam Presbyteris Debitas igne cremant:* They acknowledged their Dueness, but of malice *they set them on fire*, loth the scandalous married Presbyter should have any good by them, and yet afraid it seems to meddle with them for common profane use; And they that did so, in the next words we find treading the Sacrament under their feet.

(1) Chap. 10. pa. 279 &c.

(2) Ad An. 1074 pa. 8. & vid. Selden. ad Eadmer. Histor pa. 168. *And for after, see the complaints, (supposing payments) in* Iohn *of Chartres.* De nugis Curial. lib. 7. cap. 21.

2. Own, as about this time owned that Law of K. *Edgar*, avowed after by K. *Knoght* or *Knout*, and (3) now renewed by the Norman *Hen.* 1. for rule, penalty, and order for execution: And this here assured from the best means of in-

(3) L. Hen 1. ca. 1. *among the additionals to* M. Lambard: *whereof before*, pa. 84. & pa. 88.

information, a double entry thereof in the Exchequer Book, among the faireſt teſtimonies extant of the Land.

3. Adde, not mentioned before, that which reſembles a Parliament in the ſame King (*Hen.* 1.) days, aſſembled at *Weſtminſter* about the beginning of his Raign; where, for ſtating divers things then raiſed in doubt, among others was ordered (1) Thus: *Ut decimæ non niſi Eccleſiis dentur: Let Tythes be paid to none but Churches*; Suppoſing their Dueneſs, but limiting to whom they ſhould be paid: They might *Not* but to the Church, Therefore *There* they Might; elſe the ſuppoſition had been a vanity, and the publick voice ſaid as good as nothing. Darkneſs ſeems to be over the meaning, (or what ſhould be the import,) but light may be borrowed from the ſtate of things then about; and I conceive of it and them thus. Then was not onely ſtarted, but in a warm Caſe, the great doubt between the Secular & Regular States, about the due and immediate Receiver of Tythes, (not the Dueneſs, but the Due receiver,) and the claim parted between two, the Church & the Monaſtery: The laſt might have heard (2) Saint *Auguſtine*, ſhould ſay, *Decimæ ſunt tributa gentium animarum*, (after (3) taken into the Canon Law,) *Redde ergo Tributa pauperibus, Libamina ſacerdotibus*; And the (4) Capitularies, That they were the vows of the Faithful, and the patrimony of the poor: Hence, allowing the Churches claim indiſputable, They might There, *In ſignum univerſalis Dominii*, They doubted whether they might not alſo be paid in to the Monaſtery, and that duty of a Reall confeſſion of a Deity be ſufficiently diſcharged in giving to *Themſelves, the poor*, that whereby they might as well confeſs and acknowledge a Divinity and high Providence by, as by giving to the other Church-men? Now how votes the Aſſembly? *Ut* (5) *Monachi Eccleſias non niſi per Epiſcopos accipiant*, afterwards, *That none receive what was the Churches, but by the Church*; (and then (6) not to ſhave ſo cloſe, that the labouring Miniſter might be to ſeek of wherewith to cover his Nakedneſs; a very conſcionable and reaſonable proviſion!) And here, *Ut decimæ non niſi Eccleſiis dentur:* That is, Thoſe Tythes that are paid,

(1) Eadmer. Hiſt. Novorum, lib. 3. pa. 68.

(2) Serm. de Temp. 228.

(3) Cauſ. 16. Qu. 1 cap. 66 *And at home in* Excerp. Egberti. Can. 100. *much to the ſame.*

(4) Res Eccleſiæ ſunt vota fidelium, patrimonia pauperum. *Capitul. Carol. lib.* 1. *ca.* 83.

(5) Vid. Gratian. Vbi Sup. ca. 57. & 59. *agreeably.*

6) Neq; ſibi datas (Eccleſias) ita expolient ſuis reditibus, ut Presbyteri ibi ſervientes, in iis quæ ſibi & Eccleſiis neceſſaria ſunt, penuriam patiantur. *Eadmer. Vbi Sup.*

paid, and openly known to be due, in excluſion of the Monaſtery (immediatly,) let them be iſſued forth onely to the Church. Another remote, mediate title they might have, that is, in the Churches Right, bringing them in in the Church-way, but of themſelves they may not preſume ſo high to lay any claim. Much more might be ſaid, but this ſeems enough to enlighten the meaning of a dark Law, and as by all ſtates equally and indifferently made, ſeeming to be univerſally binding: For it was not onely a Synod, but (1) a part-ſecular-Aſſemby: For, beſides the Royall Authority, there was alſo the Peerage; I will not ſay, the Commons, but *Primates Regni*, which in ſome ſenſe They may be ſtyled, as the Heads of thoſe they repreſent. *Adunatum eſt Concilium*; for more firmneſs, both ſtates met, and united their Councels, to give things the more countenance and ſtrength of univerſall authority.

But the chief ſtrength of theſe Dues was in this Interval in the Church, and ſo properly to our days, and the diſcuſſion of them in its own ſphere with Church-men onely: For by this time they had gotten ſuch a ſtrength of credit and reputation, as well as power to be truſted with their own matters, and with the things of Religion, (their proper cure,) Tythes came in, as the ſupport and maintenance, That now, grounding themſelves upon the allowance and permiſſion of the State, they might make Canons for themſelves, and ſee them do execution, make orders for their Dues, and ſend for them in; and that ordinarily they did ſo, is ſufficiently known to all that are acquainted with them, and the then tranſaction of things in this State. *Do ye not know that the Saints ſhall judge the earth?* (ſaith (2) *Paul*) *And if the world ſhall be judged by you, are ye unworthy to judge the ſmalleſt matters? Know ye not that we ſhall judge the Angels? how much more the things that pertain to this life!* Lower, trifling, periſhing things! Can a man be thought fit for *Thoſe*, and not for *Theſe?* Is it like that his diſcretion, learning, judgement, honeſty, and univerſall integrity and ſufficiency, ſhould be an equall match for Heavenly matters, Divine things, Scripture-Oracles, reſerved Myſteries, Articles of Faith and Religion,

(1) Anno dominicæ incarnationis 1102, tertio Regni Henrici glorioſi Regis Anglorum, ipſo annuente, celebratum eſt concilium in Eccleſia B. Petri in occidentali parte juxta Lundoniam ſita, communi conſenſu Epiſcoporũ & Abbatum, & Principum totius Regni. In quo præſedit Anſelmus, &c. Huic conventui affuerunt, Anſelmo Archiepiſcopo petente à Rege, Primates Regni, quatenus quicquid ejuſdem concilii autheritate decerneretur utriuſque Ordinis concordi cura, & ſolicitudine ratum ſervaretur. *Eadmer. Hiſt. Nov. l. 3 p. 67.*

(2) 1 *Cor.* 6. 2, 3.

gion, and yet he be unfit to determine in a few worldly trifles? Heaven is under his hand, and Earth above him! Theſe and ſuch perſwaſions wrought, it ſeems, upon the reaſon of thoſe times, (to have the Miniſters of Religion intruſted at leaſt with their own,) and thus much farther and out of the way, that the Temporal Courts were then chiefly ruled by Eccleſiaſtical advice, Councellours, and Judges; the Councel Table, Common Pleas, Chancery, Judges *Itinerant*, and even the Vice-Royes Seat being often filled with thoſe men, whoſe breeding to letters, ſucceſſeful progreſſe in them, gravity, piety, and more then preſumed honeſty, made King and people of all ſorts think nothing ſo well done, as what they would ſet their hands to, and the government of no affairs ſo well ſteered and managed, as what the Teachers of Religion and Men of God, (to whom they had committed the government of their ſouls,) would condeſcend to ſtoop and interpoſe for the conduct and guidance of; But as to Tythes, ſure their Juriſdiction, as things belonging to Religion, was now brought in from the mixt County-Court, and ſettled among them alone, *Illâ ſe jactet in aulâ*, Authority had ſaid ſo, and given leave; And then, as the Lord of a Mannour having authoriſed his Steward to keep Court, the Acts paſſe with his Authority, though by the others Miniſtery; So though Decrees and Determinations of emergent affairs were agitated by Eccleſiaſtical perſons, and had their ſentence and ſeal by their conſent and mediation, yet the Supream and Univerſal Power having given Commiſſion, the things were authoritatively done, and regularly firmly enough Thence without any uſurpation or irregularity, As in the Common Pleas, Seat of Aſſize or Seſſions, where the Kings Subſtitutes did (whoſoever or whatſoever) firmly enough by his power in his perſonal abſence. Neither was this any wrong to Any: for ſo the publick hand gave out Juſtice, what matter was it. (1) which? So the Throne were eſtabliſhed in Righteouſneſs, what matter who the Supporters? So Right were done, which was the *Thing* whereof came the *benefit*, what matter who were the *Miniſters* that gave it forth, whether of this ſort or that, one or another? Though a fair preſumption be ſtill

(1) Vid *Ridley, View of the Laws*, par. 3 cap 2. ſect. 2. pa. 147.

for him that wears the Gown, and turns the Bible; and generally even Humane affaires are thought and found better ſtabliſhed, that have their ſtay by Religion. In fact thus, Here it was ſo: that Cauſes Decimal moved in this ſphere of the Supream Powers Eccleſiaſtical Cognizance and Juriſdiction ſolely, properly and onely; Neither may we henceforth expect, ſave in a glance or by reflex, any memory of Regular diſcuſſion and determination of them ſave in this compaſs: Or, as one Neighbour-Court takes notice of another, the Common Pleas of the Kings Bench, or the Chancery of the Exchequer; So the Secular whether Courts, Acts, Rules, or Deciſions, took notice henceforward no otherwiſe of the dueneſſe or diſpoſition of Tythes, then by a neighbourly Reflexe, as the Admiralty takes notice of *Englands* Common Law, or the County-Court did of the Biſhops Viſitation.

(1) Glanvill. de legibus Aug. li 2 cap. 12. 7.-8, 13, 14. 10.-12. 12.-21, 22. Bracton de Except cap 3. ſect. 2. cap. 4. ſect. 2, 3. 7. cap. 10. ſect. 1. Radulph. de Hengham ſum. parva, cap 8 pa 105. Flet. li b. 5 cap. 5 ſect. 50. cap. 26. ſect 26. cap 28. 10. ca. 30. 1, 2. li. 6. ca. 39. ſect 5 9. ca 44. 6. Stat. de Weſtmin. 2 cap. 5. 2. cap. 55.

Here therefore it may not be unſeaſonable to give the Originall of that Court, (which after a thouſand others, would never have been ſo fitly called as by that proper name the Lawyers and the Law called it, of (1) *Curia Chriſtianitatis*, or, The Court-Chriſtian, (2) becauſe Secular things (it ſhould have been ſo) and of humane life being referred to their Regulations elſewhere, where there was bleſſed Law provided for them, The things (3) of Chriſt, the affairs of the Church, (4) *Chriſtianitatis Jura*, as they were ſtyled, the ſuper-inducements to the Civil ſtate of Religion and Sal-

Circumſpecte Agatis, 13 *Ed.* 1. Cooks Inſtitut. 2. pa. 487. Doct. & Stud. Dial. Book of Entries, fol. 488.

(2) Our Anceſtors having the Common-wealth before ordained and ſet in frame, when they did agree to receive the true and Chriſtian Religion, That which was before and concerned extern policy (which their Apoſtles, Doctors, and Preachers did allow) they held and kept ſtill with that which they brought in anew. And thoſe things, in keeping whereof they made conſcience, they committed to them to be ordered and governed as ſuch things of which they had no skill, and as to men in whom for the holineſſe of their life and good conſcience, they had a great and ſure confidence. So theſe matters be ordered in their Courts, and after the faſhion and manner of the Law Civill, &c. Sir *Tho. Smythes* Common Wealth, *Lib. 3. cap. 11. Vid Cook Inſtit. 2. p 488.* agreeable hereto.

(3) Curia Chriſtianitatis, id eſt, Eccleſiæ in qua ſervantur leges Chriſti: cum tamen in foro Regiò ſerventur leges mundi. *Lyndewood tit. de foro competent. Gloſſ. Curia.*

(4) Agantur itaque primò debita veræ Chriſtianitatis jura, ſecundò Regis placita, poſtremò cauſæ ſingulorum. *L. Hen. 1, cap. 7. in Lambard. pa. 180.*

vation,

vation, were here ſet aſide to a ſelect Committee by themſelves, who by their rule ſhould judge of Hereſie, Schiſme, Apoſtacy, Scandal, &c. comparing ſpirituall things with ſpirituall; Neither was the purpoſe of erection, the naturall Juriſdiction, the lawful bounds, or intended firſt power as far as I could ever know or learn, meant of any exceſſe beyond this compaſs: Men might be irregular, and their courſes exorbitant, Themſelves wilde, but this their firſt and intended, allowed path: It may not be amiſs therefore, I ſay, to give the Original of that Court,) its riſe, growth, ſtrength, and firſt power, when and by whom ſet up, and to what likely purpoſe: All which, may not be better ſought then from the very Patent of Erection, which here therefore, (and becauſe it is ſome rarity, at leaſt not vulgarly known) from ſuggeſtion of good credit, I give and exhibite. The Law of *Circumſpectè Agatis* was directed to the (1) Biſhop of *Norwich*, and the old Charter upon Record to the (2) Sheriffe of *Herefordſhire*, yet ſo as either the power and vertue of each was meant to reach to all, or, *Mutatis mutandis*, ſeverall like Copies were ſent: So here to *Remy* Biſhop of *Lincoln*; but it was the mould of all Eccleſiaſtical power. The Charter ſpeaks thus:

(1) 13 Edw. 1.
(2) Matth. Par. ad an. 1100 pa. 53. in Hen. 1.

Willielmus Gratiâ Dei Rex Anglorum, Comitibus, Vicecomitibus, & omnibus Francigenis & Anglis qui in Epiſcopatu Remigii Epiſcopi terras habent, Salutem. Sciatis vos omnes, & cæteri mei fideles qui in Anglia manent, quod Epiſcopales leges quæ non bene, nec ſecundum ſanctorum Canonum præcepta uſque ad mea tempora in Regno Anglorum fuerunt, communi Concilio, & Conſilio Archi-Epiſcoporum meorum & caterorum Epiſcoporum, & Abbatum, & omnium Principum Regni mei, emendandas judicavi. Propterea mando, & Regia authoritate præcipio, ut nullus Epiſcopus vel Archi-Diaconus de legibus Epiſcopalibus amplius in Hundretto placita teneant, nec cauſam quæ ad regimen animarum pertinet ad judicium ſæcularium hominum adducant, ſed quicunque ſecundum Epiſcopales leges de quacunque cauſa vel culpa interpellatus fuerit, ad locum quem ad hoc

Cook Inſtit. 4. *of the Iuris diction of Courts*, cha. 53. p. 259. and ſee M. *Selden of Tythes*, cap. 14. ſect. 1. *and in his* Not. ad Eadmer. pa. 167.

Epiſcopus elegerit, & nominaverit, veniat, ibique de cauſa ſua reſpondeat, & non ſecundum Hundrettum, ſed ſecundum Canones & Epiſcopales leges rectum Deo & Epiſcopo ſuo faciat. Si verò aliquis per ſuperbiam elatus ad juſtitiam Epiſcopalem venire noluerit, vocetur ſemel, & ſecundo & tertiò; quod ſi nec ſic ad emendationem venerit, Excommunicetur: Et, ſi opus fuerit, ad hoc vindicandum, fortitudo & Juſtitia Regis vel Vicecomitis adhibeatur: Ille autem qui vocatus ad Juſtitiam Epiſcopi venire noluit, pro unaquaque vocatione legem Epiſcopalem emendabit: Hoc etiam defendo & authoritate mea interdico, ne ullus Vicecom. aut præpoſitus, aut Miniſter Regis, nec aliquis Laicus homo de legibus quæ ad Epiſcopum pertinent ſe intromittat: nec aliquis Laicus homo alium hominem ſine Juſtitia Epiſcopi ad judicium adducat; Judicium verò in nullo loco ponatur niſi in Epiſcopali ſede, aut in illo loco quem ad hoc Epiſcopus conſtituerit.

This is by good information the erection of the Court-Chriſtian: Before which, things (Tythes) were handled in Conjunction with othe matters, at one meeting under ſeverall perſons; but here their Juriſdictions were parted. There ſeems obſervable in this Conceſſion:

1. That the Royal power acts, and derives this Authority and leave to exerciſe Juriſdiction, and where, and how far, from it ſelf: *Mando, & Regia authoritate præcipio.* For *Quis? Who is to grant here* (1) *Liberties but the King?*

(1) Ipſe Dominus Rex, qui ordinariam habet Juriſdictionem, & dignitatem & poteſtatem ſuper omnes qui in regno ſuo ſunt: Habet enim omnia jura in manu ſua quæ ad Coronam & Laicalem pertinent poteſtatem; & materialem gladium, qui pertinet ad regni gubernaculum; habet etiam Juſtitiam & Judicium quæ ſunt Juriſdictiones, ut ex Juriſdictione ſua, ſicut Dei miniſter & Vicarius, tribuat unicuique quod ſuum fuerit. Habet etiam ea quæ ſunt pacis, &c. Habet etiam Coertionem, &c. Item habet in poteſtate ſua leges & conſtitutiones, &c. Nihil enim proderit jura condere niſi ſit qui jura tueatur. Habet igitur Rex hujuſmodi jura ſive juriſdictiones in manu ſua. *De acquir. rerum dom. cap. 24. ſect. 1. fol 55.*

For he was under God ſole Monarch: and ſo though he might not exerciſe all powers, it might be fit he did diſpoſe of all powers, as to role Preachers, though he did not preach: and ſo eaſe his ſhoulders by laying the burden of Duty upon whomſoever he ſhould think fitteſt. He ſhould have been everywhere, but ſith he cannot, ſaith the ſame Authour, *of Delegations:* Si ipſe Dominus Rex ad ſingulas cautas terminandas non ſufficiat, ut levior ſit illi labor, in plures perſonas partito onere, eligere debet de regno ſuo viros ſapientes, & timentes Deum, in quibus ſit veritas eloquiorum, & qui oderunt avaritiam (quæ inducit cupiditatem) & ex illis conſtituere juſtitiarios, &c. *ſd. de Action. 10. 1. fo. 108*

This very Patent is alledged by M. Selden, *as an inſtance of the Kings Supremacy, in all cauſes, over All perſons.* Ad Eadmer. Not. pag. 166.

ſays

says *Bracton*: He speaks it of Lay; but who sees it not to be fairly interpretable a part of Lay-business to oversee and appoint Church-men what they should do, to direct and order where they shall speak, and treat, and act, or where not, if the manner or consequents foreseen import just fear of trouble or disturbance. Neither is this an usurpatiō or incrochment upon what is of spiritual office, any more then for *David* or *Hezekiah* to appoint the Courses of the Priests, How their Ephemerides for divine services should be observed, for *Solomon* or *Joshuah* to rule All Israel, or, amongst us, a Church-Warden to examine, and grant or deny a man licence to Preach, where he has power, and he is intrusted with the peace and order of the place, which is not to meddle with Preaching, but order about it.

2. That Royal power was full: for it was done in Common-Councel, *Communi Concilio, & Consilio* (by the advice) *Archi-Episcoporum, &c. Et omnium principum regni mei*, All the Chiefs of the powers about him.

3. The things limited to be directed about, were meerly spiritual, *qui ad regimen animarum*, no danger or intent of medling with affairs of the Common-wealth, or interposing in business of Lay fee. A very good, and the best boundary of this Jurisdiction, and which alone secures extravagancy, from power to disturb in secular business, or so much as meddle with meerly humane affairs or interesses: whereunto the title also of, The Court-Christian, or of Religion, should have not a little furthered.

4. The remedy upon contumacy in not appearing, was proper, of Excommunication: *Peters* onely sword he might lawfully wear and use, and this but onely by the Kings Commission.

5. Yet the King assists him in the use of this, and comes to relieve his spiritual by the temporal, if need be. For the sword should back the Word, yea, *gladius gladium juvat*, intwisted power is strongest, and needs to be mutually assistant one part to the other.

6. No Lay Judge was to intromixe: What needed? the things treated on were, or were to be Ecclesiastical, and of another

another ſort: They had their ſhop by themſelves, and work to do, and each his own proper and fit; And it has been the great wiſdom of the Nation to keep them apart, every ſeveral thing by it ſelf, that no work or power ſhould croſſe another.

Object. *Some Objections are from a* (1) *name not to be deſpiſed: as the time of inrolling, not before* R. 2. *time, and ſome obliqne* (2) *contradiction from the Red Book in the Exchequer: as if by theſe the Patent were not authentick: But,*

Anſ. 1. Scarce is there any thing but ſomewhat may be ſaid againſt.

2. At fair diſtance enough is the time of inrolment, *ſc. Rich.* 2. and then it was but inrolled.

3. The preſerver with the place of preſervation are of much moment, *ſcil.* in the Tower, by the King: neither of which but gives much of preſumption againſt forgery.

4. And other tranſcriptions do alſo agree: Manuſcript, like this, and of thoſe ſeveral kept too where leaſt ſuſpicion of forgery is again, in Regiſters. As thoſe of the (3) Biſhop of *London*, and Archbiſhop of *Cant.* In which (4) laſt *Robert Winchelſee* ſo long ſince as in *Edw.*2. time, (and ſo long before *Rich.*2. as in his great Grandfathers days) ſettles his draught of *Articuli Cleri* upon it, Preſented to *Edw.* 2. as the grievance of the Church, and in his ninth year aſſented to for remedy.

5. M. *Selden* (a great name) queſtions it not. He made uſe of it (5) thirty years ago publickly enough: He ſince exhibited it to view in (5) the edition of *Eadmers* Hiſtory, and has not (I believe) yet manifeſted any revocation of opinion.

So that I ſee not but we may ſet down this for the Biſhops Patent of Juriſdiction, authentick enough, ſo long as he had any, and the firſt foundation of the Conſiſtory, or as it was called *Curia Chriſtianitatis*, in *England* the Court of Religion: not unfitly remembred here as the bottome of that power whereby the right of Tythes was with us diſcuſſed, and themſelves recovered, as they had been, and were after, (as ſhall

(1) Lo. Coke, Vbi Sup.
(2) *As if, that Book being of* Hen. 1. *time, the Biſhops ſate then in the Shire Court, and* Chriſtianitatis Iura *were then there pleaded.* Vid. L. Hen. 1 cap.7.pa.180. *annexed to M.* Lamb. Arch.

(3) Cook ib.
(4) Cæterùm in actorũ Rob Winchelſii Archiep. Cant. Regiſtro ſeu publicis ejus tabulis Mss. totidem ferè verbis occurrit id quod Guilielmo Regi hic tribuitur. Regi etenim *Edwardo* 1. in ordinum Comitiis, &c. *Selden Not. ad Eadmer.pa.* 168.
(5) *Hiſt.of Tythes* cap.14.ſect.1.
(6) *Printed in* An. 1623.p.167.

ſhall continue to be ſhewed,) ſtated by the Law. Whereunto there was alſo ſucceſsfully and ere long ſuch following and thronging recourſe, that the great Inquirer here laſt mentioned findes it a task worthy his painful ſearch and curious diligence, (1) whether, after, the right were regularly handled under any other Juriſdiction? He findes ſparingly *ſome inſtances,* (2) *as about* Hen. 1. *and his ſucceſſours time, till* Hen. 2. *and* K. John: But ſince only in fives caſes. 1. *By way of prohibition upon a ſuggeſtion of a* Modus decimandi. 2. *In a writ of* Indicavit: (But neither of theſe were at firſt inſtance.) 3. *By* Scire facias *from the Chancery in ſome caſes.* 4. *In ſome other by proceſs of bare command.* And, 5. *By vertue of the Late Stat. of* 32 Hen 8. and 2 Edw. 6. No more: And theſe were but ſome ſcattering exceptions from the generall rule neither. He prefaces that inquiry with (3) theſe words: *It is clear* (ſaith he) *by the practiſed Common Law, both of this day, and alſo of the ancienteſt times that we have in our Year-Books, that regularly the Juriſdiction of Spirituall Tythes (that is, of the direct and original queſtion of their right) belongs, I think, as in all other ſtates of Chriſtendom, properly to the Eccleſiaſtical Court. And the latter Statutes that have given remedy for Tythes infeodated from the Crown after the diſſolution, leave alſo the Ancient right of Juriſdiction of Tythes to the ſame.* He inſerts (4) after, that *ſince about K.* Johns *time Original ſuits in Temporall Courts for Tythes have been rare:* Adding, upon a long diſcourſe of the *Indicavit*, and changing the proportion of the dues of a Church to be the ground of it by the Statute of *Weſt. 2. cap. 5.* (5) *that long before, Tythes were demandable of the owner detaining them, of their own nature, and pleadable in the Spiritual Court, and there onely*; and concludes, (6) that *ſince* 22 Edw. 3. *there have been no Original Suits for Tythes in Temporal Courts, ſaving onely upon Prohibitions* (at ſecond inſtance,) and by the Stat. of 32 *Hen.* 8. and 2 *Edw.* 6.

(1) *Hiſt. of Tyth. cap.* 14.
(2) Pa. 422.
(3) Pa. 411.
(4) Pa. 411.
(5) Pa. 427.
(6) Pa. 447.

It is ſome difficulty to underſtand learned men; but the conſent theſe things ſeem to have with the truth, and have both among themſelves and with other of like nature abroad, renders

renders it hoped there hath been here no miſtake; which if, Then hath been gained 1. The erection of the Court Chriſtian by *Will.* 1. 2. The tranſaction of Spiritual things there, even though formerly under the cognizance of the Common Law and Lawyer immediatly. 3. Tythes, (as *Spiritualibus annexa*, and evidently belonging to Religion, and thence within the compaſs of the Canons,) To move here as in their proper ſphere. (Remember their Right was well enough provided for before, Here were onely to be ſome emergent deciſions for their regulation, or Recovery of ſtated dues.) 4. The Lay Juriſdiction outed as to cognizance immediate, direct and ordinary. 5. In practice things have been no doubt according. 6. And therefore we muſt now chiefly for a while attend the Church.

CHAP. XIX.

WHich we ſhall in two parts: as well to the *Jus dare*, as *Jus dicere*; to what we finde in this Interval to have been *Legiſlative*, as what was *Executive*; Giving more largely what belongs to the former, wherein was uſed the allowed power given in Regulating the Rule, framing Canons, or ſetting or keeping to right, that Law was here the rule of Right, but more ſparingly touching at the later which concerned known practiſe; For, that ſuch Courts were kept, is a thing vulgarly and to all known; That a diſcuſſion was there, and a ſentence the ground of Right and Own, the Lawyers of the other Gown will not deny; That things were there diſpoſed, tranſpoſed, and ſettled to full property, the event did ſhew. Of this therefore the more ſparingly, which is known and did but help to *Recover Right*; That which *Gave it*, being more proper for us, and both fitly ranged under that generall head of what was done by that

that power we are now confined to, which is Ecclesiastick. And here first, If the Synod at *Westminster*, whereof (1) before, were but a Synod, remembred be it and granted hence, what authority it must then have had: And likewise another more clearly a Synod under the Conquerour, but written in Saxon, where, (divers aws preceding of fasting, alms, penance, &c.) we have, (2) *Let Tythes be paid of all that is possessed by the Lords bounty.*

(1) Pag. 111.

(2) Selden. *Hist. of Tythes*, chap. 8. sect. 14.

In a Councel at *Cleremount* in *France*, one (3) Canon was, *Unaquaeque Ecclesia decimas suas habeat, nec ad aliam transferantur. Let every Church have its own Tythes without confusion:* Which would not likely have been taken notice of in our authentique story, if it had not concerned us, as indeed it did, and was no doubt (4) of Catholique observation.

(3) Matth. Par. ad an 1095. pa. 21. in Will. 2.

(4) Haec quae sequuntur capitula constituit Vrbanus & universali Ecclesiae tradidit observanda. *Id pa* 20.

In (5) *Hen.* 1. time, I finde it decreed in a Councel held under *William* the Archbishop about the year 1129. *Decimas sicut Dei summi Dominicas ex integro reddi praecipimus. We command they be fully allowed as the Lords Demesnes.*

(5) Tildesly Animadvers. *on M. Seldens Hist. pa.* 16.

In (6) another at *Windsore*, about then is this Canon: *Ut Laici decimas reddant sicut praeceptum est: That Laymen pay, as is commanded.* (I am now transcribing, and so hastening: It will not be long ere we get on our own wings again.)

(6) Selden Vbi Sup sect 15.

(7) *Alberique* Bishop of *Ostia* was Legate here under *Innocent* the second, in K. *Stevens* time, and He held a Synod in *Anno* 3. where is this Canon: *De omnibus Primitiis rectas decimas dari Apostolica authoritate praecipimus, quas qui reddere noluerit, Anathematis in eum sententia proferatur:* Let him that pays not, be Excommunicate; where it seems *Primitiae* must be understood for every new years encrease.

(7) Id. sect. 18.

(8) In *Eugen.* 2. time, about the year 1147, under the same King was held a Synod at *Westminster*, wherein tythes are disposed of. It has no more then a supposition of them, and that the Church disposed, which may yet crave place here as not of no consideration. *Nullus Abbas, Nullus Prior,*

(8) Mss *in the publique Library at Oxford cited in the margin of D.* Ridley, *View of the Laws*, pa. 155.

Nullus omnino Monachus aut Clericus Eccleſiam ſive decimam —— ſine Epiſcopi Conſenſu, &c. And (1) two years after in another Synod there to the ſame purpoſe: *Ut nulla perſona Eccleſias vel decimas accipiat —— ſine authoritate Epiſcopi.*

(1) Ib.

By the way, we may not about theſe times much look for ſet and purpoſed binding Laws about Tythes; They needed not, For *Such* had paſſed before, ſufficient to raiſe and aſſure a *Due:* But onely to *Regulate*, diſpoſe, or determine about emergent controverſies, concerning them, and theſe not wanting.

In *Hen.* 2. time, I finde *Alexander* the third directing ſeverall Conſtitutions (for that force his Orders had here) to the Biſhops of *Canterbury*, *Wincheſter*, and *Exceſter*. They are taken by *Gregor.* 9. into (2) the body of the Decretals, and no doubt had their power and found obedience here: for (3) where the Kingdome did not croſſe, the Canons were, and it ſeemes by the Proviſo of 25 *Hen.* 8. 19. are binding Laws. And let no man object here the uſurpation, or allay of credit from forain authority: Things ſo ſettled do, no doubt, often contract a right in Time, which (if the power be able to ſupport and bear it ſelf out,) doth with continuance grow up and ſoder into ſtrength and firmneſſe enough, able ere long to walk the world without guide or aid, or we have little of ſtayedneſs and ſolidity here in *England*. If we go about to undo all (of ſecular depending on ſacred) which had its firſt riſe, and that whereby it yet ſtands, from *Rome*, We need not go beyond Sea for *Babylon*, it will come home ſhortly to us, and we ſhall have confuſion enough within our own Threſholds. Though we do not in preſent, we muſt allow of many things done heretofore and ſettled by uſurpations, proceeding as well from abroad, as exerciſed at home, or the fruit of weightieſt tranſactions will be robbed away from us, perhaps the pillars of the Common-wealth ſhaken. As to thoſe three Epiſtles, the firſt of them gives order as 'twere by a binding Law, thus: (4) *Pervenit ad nos, &c. Mandamus, quatenus Parochianos veſtros monere curetis, & ſi opus fuerit ſub Excommunicationis diſtri-*

(2) Lib. 3. tit. 50. de decimis.

(3) Vid. Selden *Review*, pa. 489.

(4) Cap. 5.

districtione compellere, ut de proventibus Molendinorum, Piscariarum, fœno, & lana decimas Ecclesiis, quibus debentur, cum integritate persolvant. It was for four sort of Tythes to be paid, of Mills, Fish-ponds, Hay, and Wool: having after monition, Excommunication to refusers.

(1) The next is to the Bishop of *Wincheſter: Nuncios; & infra. Mandamus quatenus Parochianos tuos de apibus, & de omni fructa decimas persolvere Ecclesiastica districtione compellas:* for Bees, and Fruit. (1) Cap. 6.

(2) The last to the Bishop of *Exceſter: Cùm homines de Hortona, de frugibus, novem partibus sibi retentis, decimam Ecclesiæ cujus Parochiani sunt, sine diminutione solvere teneantur; & antequam id faciunt servientibus, & Mercenariis suis de frugibus non decimatis debita totius anni pro servicio suo impendant, tunc demum de residuo decimam solventes, Mandamus quatenus eos cogatis, ut decimam statim fructibus collectis persolvant, atque de subtractis & retentis dignam satisfactionem exhibere procurent.* It seems they were willing to deduct the charge of the Fermage before they marked out the Tythes, paying their servants out of the fruit for the work bestowed about them, and so apportion onely out of the free bounty of heaven, (3) a thing much stood upon, and by this Law stood against, which willed the tenth of all as it grew, and so was the pattern of the Old Testament: Their seed and labour were also chargeable, yet they were bound up, of All, without any deduction: And if *Jehovah* gave them their land, which, (presuming they would sow,) he might the better expect a charge from his own gift, This exaction is no less reasonable, or more burdensome from us who Give nothing (of our own,) but issue out onely what *was Given* and set aside by others; it *Iehovah* required to be restored back to him of his own, we doe but pay what others of their bounty Gave, And therefore with them as to separating any thing we are possessed of in full title as our Own. *Jam summus ergo pares.* (2) Cap 7. (3) Cap. 22. 26. 28. seqq. & Vid. Lyndewood tit. de decimis cap. Errotis. Cap. Quoniam propter. & cap. Sancta Ecclesia. (4) Annal. par. 2 pa 543. Edit. 1601. Francofur. *That it was taken out of the Council of Rosne* (ex Concilio Rothomagensi) *the letter forth hath noted in the margin.*

Out of the Canon (4) *Roger Hoveden* points us to another plant growing in our own soil, which no doubt lived to take fruit downward, and bear fruit upward; and it was set

toward the end of this *Hen.* 2. time by *Rich.* Archb. of *Cant.* in a Synod at *Weſtminſter* the Lo. day after the Aſcention, where (the King and his ſon being preſent) paſſed thus: *Omnes decimæ terræ ſive de frugibus ſive de fructibus, domini ſunt & illi ſanctificantur. Sed quia multi modò inveniuntur decimas dare nolentes, ſtatuimus; ut juxta Domini papæ præcepta admoneantur ſemel, ſecundò & tertiò* (according to the High Commiſſion before given out by *Will.* 1.) *ut de grano, de vino, de fructibus arborum, de fœtibus animalium, de lana, de agnis, de butyro & Caſeo, de lino & Canabe, & de reliquis quæ annuatim renovantur, Decimas integrè perſolvant:* or if not, *Anathema.* A full and plain Law, *ſpeciatim* for Corn, Wine, Fruit, breed of Cattle, Wooll, Lamb, Butter, Cheeſe, Flaxe, Hemp, and all that grows and renews yearly, &c. and of what power in the ſtate, may be gueſſed both by from what before, where the Superiour Powers had joyned to intruſt the Church in ſuch matters (which implies their authority ſtill;) and further here the K. and his ſon gave the preſent countenance of their perſons to patronize and eſtabliſh it. And heed alſo the *Dueneſs* ſuppoſed in the beginning, they were not now ſo much willed to be *payed*, as ſhifters to be brought in to *diſcharge of known dutie*. Elſewhere alſo in the ſame (1) Authour, *Hubert* Arch. of *Cant.* kept a Synod at *York* the *Tueſday* after Saint *Barnabies* day, 6 *Rich.* 1. where one of the binding reſults of Councel ſpeaks thus: *Cum Decimæ ſint tributa egentium animarum, & ex præcepto Domini dari debeant, non eſt reddentis eas diminuere:* Therefore all to be paid without any diminution for Fermage, of which before, entirely. And much ſeverity is again in another (2) Provincial of the ſame *Hubert* afterward, with Excommunication to thoſe ſhould withdraw any thing to pay the Harveſt-mans wages, or the charge of new-broke grounds, or not to the Pariſh Church, &c. But becauſe this meeting was againſt the Lord Chief Juſtice his Prohibition, and ſo had not the authority of the ſecular power, I paſs it over: though then it were of ſome doubt whether ſuch meetings were valid, which is ſince clearly reſolved that they are not, by the Statute 25 *Hen.* 8. 19. And ſo for ano-

(1) Par. ead. pa. 75.

(2) In ead pa. 808.

another (1) Canon againſt whether Templars or Others ſhould receive Tythes from Lay-hands, in the ſame Authour. (1) Ib. Pa. 809.

To ſome time of *Hen.* 2. is referred a Councel *Lateran* under *Alex.*3. limiting the former liberty of paying to Any Church, to the Parochial, as fitteſt to have benefit, and neareſt to take the dues up: though later and quicker apprehenſions remove the ſcene to *Innoc.* 3. who in K. *Johns* time expreſſed his ſingle will onely from the *Lateran* Church. This gave the miſtake, or might well. M. *Selden* has it from the (2) print, and the (3) Lo. *Cook* from the more authentique Roll in the Tower, ſpeaking fully what a papall Conſtitution might, and no more, thus: *Pervenit ad audientiam noſtram, quod multi in Dioceſi tua Decimas ſuas integras, vel duas partes ipſarum, non illis Eccleſiis in quarum Parochiis habitant, vel ubi prædia habent, & à quibus Eccleſiaſtica percipiunt Sacramenta, perſolvunt, ſed eas aliis pro ſua diſtribuunt voluntate. Cum igitur inconveniens eſſe videatur, & à ratione diſſimile, ut Eccleſiæ quæ ſpiritualia ſeminant, metere non debeant à ſuis Parochianis temporalia, & habere:* Therefore proceed according to the Canons, and ſee obedience yeelded by Church-cenſure, &c. *Dat. Lateran. Nonas Iulii.* (2) Cap. 8. & 23. & Vid. cap. 10. & 2. (3) Inſtit. 2. pa. 641.

Here, they ſay, was firſt a Parochial Right eſtabliſhed: And if ſo, a Right; which I think none will deny, and is all I contend for: and the Lord Chief Juſtice grants it his way; though not by force of the Decretal, yet as Juſt and Right it was allowed, and ſo became *Lex terræ*. Any way ſerves the turn, and if the Poſition, much more the Suppoſition: If a *Parochial* right, then a *Right*, at leaſt. Review ſome of the words: to which purpoſe, The grievance complained of was, that Many did not pay their whole Tythes, *Decimas ſuas integras vel duas partes ipſarum* — to their own Miniſter, but at pleaſure: So they paid, the thing was done, And this the height of what I reach at.

To the ſame Kings time alſo I refer another Decretal ſent hither from *Innoc.*3. to the Biſhop of *Ely*, which had no doubt the ſame force here, not for right of Tythes (which remem- Decret. Gregor. Lib. 3 cap. 28. col. 1230. Edit. Taurin.

remember had been before eſtabliſhed, and was now but made Parochial; More then To Tythe, To the Pariſh Church, now growing as common as to enjoy,) but to ſatisfie a doubt that might ariſe about the manner of Tything, and wils no deduction ſhould be for Mils and Ponds: (And ſtill remember alſo by what immediate conſequence the ſupream power went on confirming All, whereof we read no contradiction.) *Paſtoralis Officii, &c. Explicari poſtulaſti utrum quis poſſit de molendinis & piſcariis neceſſarias expenſas deducere, priuſquam ſolvat decimas ex eiſdem, ſicut eſt in negotiatione conceſſum?* But it is long, and I refer to it. The forain power does ſomewhat againe here blemiſh: but remember again too what before, and adde the ſo often mentioned confirmation to us of *Hen.*8. If a ſteward can do nothing, yet if a Lord ratifie, the Act is good: If the Chaplain be over-buſie in a family, yet if the Maſter confirm, now 'tis valid, though the thing were beſides his Cure: So if the Pope medled with that he ſhould not, the King and State looking on, and not contradicting but conſenting and approving; Here ſeems now a conſummation of all-ſufficiency of power at the firſt, and time going on to ripen what at firſt production was but raw, a growing up to all perfection. And ſo in that which next follows which I take to be of the ſame to the ſame, wherein reſolution was given about new-broke grounds, ſuppoſing, I underſtand the Tythes of a place to be payable to a perſon, or Church out of the Pariſh, who ſhould then have thoſe new Tythes? 'Tis anſwered in favour of the Pariſh Church there, *That Church; unleſs the forainer can ſhew a very fair plea for them: Cum enim perceptio decimarum ad parochiales Eccleſias de Jure communi pertineat,* (ſo far it was gone then,) *decimæ novalium quæ fiunt in parochiis earundem, ad ipſas proculdubiò pertinere noſcuntur, niſi ab his quæ alias percipiunt decimas, rationabilis cauſa oſtendatur, per quam appareat novalium ad eas decimas pertinere.* Sith of Common right Tythes did belong to the Pariſh where they grew, The new-broke grounds muſt tythe thither alſo, unleſs very ſufficient reaſon can be ſhewn to the contrary: This the ſubſtance.

But

But the ſtrongeſt and moſt vigorous Conſtitution which with life and power hath acted among us, and indeed was the late ſeen and looked upon Rule and Law to guide All, was that (1) Canon of *Rob. Winchelſey*, as it is uſually ſtyled, though *Lindwood* (the ſetter forth) ſays he found it in ſome Books aſcribed to *Boniface* (of the ſame See,) or as in one very ancient copy, *Conſtitutio communis Epiſcoporum congregatorum apud* (2) *Merton in Communi Concilio*; as if ſo, it was the ſtronger, an act of the whole Convocation. But whoſe ſoever it was, it was about thoſe times. (Remember *Rob: Winchelſey* (3) entred his charge *Anno Domini* 1293. about 19 *Edw.*1. and (4) ended it about 1312, and 4 *Edw.*2. and ſo we are, as we took leave, a little without the ſtrict bounds of our method, behither *M. Charta.*) The words are as followeth; (and I Engliſh them for the uſe of every Reader.)

(1) Lyndwood Conſtit. provinc. lib.3.tit.de decimis.

(2) *And ſo it is alſo in* Pupilla oculi,part. 1 cap. 3. *ſays M.* Selden.

(3) Polyd. Virg. Hiſtor. Anglic. lib.17.pa. 324.
(4) Id.lib.18. Pa. 342.

Quoniam propter diverſas conſuetudines in petendo decimas per diverſas Eccleſias inter rectores Eccleſiarum & Parochianos ſuos rixæ & contentiones, ſcandala & odia maxima multotiens oriuntur. Volumus & ſtatuimus quod in cunctis Eccleſiis per Cantuarienſem provinciam conſtitutis uniformis ſit petitio decimarū & proventuum Eccleſiarū. In primis, volumus quod decimæ de frugibus, non deductis expenſis, integrè & ſine aliqua diminutione ſolvantur, & de fructibus arborum, & de ſeminibus omnibus, et de herbis hortorum niſi parochiani competentem fecerint redemptionem pro talibus decimis. Volumus

Whereas by reaſon of divers ways of tything in divers Churches, ſtrife and contention are wont to ariſe between the Church-Governour and his people; we will and appoint, that through the Province of *Canterbury* there be this uniform way of Tything. Firſt, wee will that Tythes be paid of Fruit without any deduction of charge intirely, and without diminution, (ſo reaching in an order about the charge of Fermage, ſpoken of before, and preventing that exception;) and of fruit of trees likewiſe, and of all ſeeds and garden hearbs, unleſs the Pariſhioners

ners will make ſome competent exception for them. Alſo we will and appoint, that Tythes be required of hay, (or green graſs, if it be cut to ſpend, ſays *Lyndewood* in his Gloſſe) wherever it grow, in greater Meadows, or leſſer, or in the High-ways, and that it be paid as is beſt for the Church: For breed of Cattle, as, touching Lambs, we appoint that for ſixe and below, ſo many half pence; if there be ſeven, the ſeventh ſhall be tythe, yet ſo, that the Church-Govenour receiving the ſeventh, ſhall pay 3 half-pence to the Pariſhioner: He that takes one of eight, a penny, one of nine, a half-penny; or let the Rector ſtay for the tenth, if he had rather, to the following year. And he that ſo ſtays, let him alwayes have the ſecond or third beſt of the following yeare, and this for his ſtay. And ſo is it to be underſtood of the tenth of Wooll. But if the Sheep depaſture one where in Winter, another where in Summer, the tythe is to be divided. In like manner if any one ſhall buy them in the middle of the year, and it be known from what Pariſh the ſheep come, *& ſtatuimus etiam quod decimæ de fœnis ubicunque creſcant, ſive in magnis prat, ſive in parvis ſive in Chiminis, exigantur, & prout expedit, Eccleſiæ perſolvantur. De nutrimentis autem animalium, ſcilicet de Agnis, Statuimus quod pro ſex agnis & infra ſex oboli dentur pro decima: ſi ſeptem ſint agni, in numero ſeptimus agnus detur pro decima rectori: ita tamen quod rector Eccleſiæ qui ſeptimum agnum recipit, tres obolos in recompenſationem ſolvat parochiano à quo decimam illam recepit. Qui octavum recepit, det denarium. Qui vero Nonum, det obolum parochiano: vel expectet rector uſque ad alium annum donec plenarie agnum poſſit recipere ſi maluerit; & qui ita expectat ſemper exigat ſecundum agnum meliorem vel tertium ad minus de agnis ſecundi anni, & hoc pro expectatione primi anni. Et ita intelligendum eſt de decima lanæ. Sed ſi oves alibi in hyeme, alibi in æſtate nutriantur, dividenda eſt decima. Similiter ſi quis medio tempore emerit vel vendiderit oves, & certum ſit a qua parochia illæ oves venerunt, earundem dividenda eſt decima, ſicut de re quæ ſequitur dominum*

domicilia. Si autem incertũ fuerit, habeat illa Eccleſia totam decimam infra cujus limites tempore tonſionis inveniantur. De lacte vero volumus quod decima ſolvatur dum durat, videlicet de Caſeo tempore ſuo: & de lacte in Autumno & hyeme: Niſi parochiani velint pro talibus facere competentem redemptionem, & hoc ad valorem decimæ & ad commodum Eccleſiæ. De proventibus autem molendinorum, volumus quod decimæ fideliter & integrè ſolvantur. De paſturis autem & paſcuis tam non communibus quam communibus ſtatuimus quod decima fideliter perſolvantur, & hoc per numerũ animalium & dierum, ut expedit Eccleſiæ. De piſcationibus, & apibus ſicut de omnibus aliis Bonis juſte acquiſitis quæ renovantur per annũ, ſtatuimus quod decimæ ſolvantur & exigantur debito modo. Statuimus etiam quod decimæ perſonales ſolvantur de artificibus & mercatoribus, ſc. de lucro negotiationis. Similiter de Carpentariis, Fabris, Cementariis, Textoribus, Pandoxatricibus, & omnibus aliis Stipendiariis Operariis; ut videlicet dent decimas de Stipendiis ſuis, niſi

the tythe is to be divided, as of a thing belonging to ſeveral places; but if it be not known, let the Church have the benefit where they are at ſhear-time. Concerning Milk, we will that the tythe be paid as it ariſeth, that is, of Cheeſe, ſo long as it is made, and of milk in Autumn and Winter, unleſs the Pariſhioners will make due compenſation according to the value of the tythe, and to the Churches advantage. As concerning the profits of Mils we will that tythes be faithfully & intirely paid. As for paſture and feeding grounds, as well Common as other, we appoint the tythe be fully paid, and this with regard to the Beaſts and time of going, as ſhall be beſt for the Church. For Fiſhings and Bees, as of any other goods honeſtly gotten, which renew yearly, we appoint, that the tythe be paid and required duly. We decree alſo, that perſonal tythes be paid by Handy-crafts-men and Merchants, that is, of the gain of their trading; the like of Carpenters, Smiths, Maſons, Weavers, and all other hired Labourers, that they give the tythe of their wages, unleſs they will give any

thing certain toward the Light in the Church, and this at the Church-governors choice——

Then (after ſome words of Mortuaries.) But becauſe there are many that refuſe to pay their tythes, we will, that Pariſhioners be warned once, twice and thrice, (which was the number of eſſoyns allowed in the Conquerours Charter, as before) to pay their tythes to God and the Church truly. Or if they refuſe, they be firſt ſuſpended from entring into the Church, and ſo bee compelled by Eccleſiaſticall cenſure, if need be, to pay. Or if they require releaſe or abſolution from ſuſpenſion, let them be ſent to the Ordinary of the place for it, and duly puniſhed. And as to the Church-Governors themſelves, or Vicars, or Chaplains by the year, who for fear or favour of men, ſetting aſide their awe to Heaven, do not effectually require their tythes aforeſaid, let themſelves be ſuſpended till they pay a mark to the Archdeacon of the place for their diſobedience.

Stipendiarii ipſi aliquid certum velint dare ad opus vel ad lumen Eccleſiæ, ſi rectori ipſius Eccleſiæ placuerit—— Sed quoniam inveniuntur multi decimas ſponte dare nolentes, ſtatuimus quod parochiani moneantur primo, ſecundo & tertio ut decimas Deo & Eccleſiæ fideliter ſolvant. Quod ſi ſe non emendaverint, primò ab ingreſſu Eccleſiæ ſuſpendantur, & ſic demum ad ſolutionem decimarum per cenſuram Eccleſiaſticam, ſi neceſſe fuerit, compellantur. Si autem dictæ ſuſpenſionis relaxationem vel abſolutionem petierint, ad Ordinarium loci mittentur abſolvendi, & debito modo puniendi. Rectores autem Eccleſiarum ſeu Vicarii aut Capellani annui qui prædictas decimas prædicto modo propter formidinem hominum ſeu favorem, timore Dei poſtpoſito, (ut prædictum eſt) cum effectu non petierint, pœna ſuſpenſionis innodentur donec dimidiam marcam argenti Archi-Diacono loci perſolvant.

I have both tranſcribed at length, and tranſlated this, as I ſaid, becauſe it is the chief Law, whereupon (immediatly) the

the dueneſs of tythes is grounded and known by the Canon: as to the Regulation of the manner of collecting this prevailing, though not as to the dueneſs it ſelf; for this, as hath been ſhewed, was ſecured before, and therefore the law begins with ſuppoſition, and blame, that men did not Pay as they ought, which was here intended to be remedied. And for the ſufficient authority hereof, we need not much doubt; for Lawyers and Men were awaked both then and ever ſince, & would not through ages and generations have been frighted or cheated with meer empty ſhews of Paper Canons into a fooliſh & childiſh awe of what was but terrible. They knew no doubt, from time to time there was ſtrength enough (with help of former grounds) to carry things on and force them, if any rub of oppoſition were laid in the way, which made them pick a vertue out of that was indeed a kinde of neceſſity, and doe with ſeeming willingneſs, what if they would not, they muſt and might have been compelled to. Other Conſtitutions are alſo about the ſame time, but not of ſo great moment; yet, becauſe they have ſome force, our niggardize ſhall not ſuppreſs what may be pleaſing, profitable, or in any regard uſeful. The next is about Cattle removeable from place to place, and hath vertually ſixe propoſitions.

Quoniam ut audivimus, &c. Nos viam pacis præparare volentes ſtatuendo definimus, & definiendo ſtatuimus, quod ad Eccleſias in quarum parochiis oves à tempore tonſionis uſque ad Feſtum S. Martini in hyeme continuè paſcuntur & cubant, decima lanæ, lactis, & caſei ejuſdem temporis, licet poſtea amotæ fuerint ab illa parochia & alibi tondeantur, integrè ſolvantur. Et, ne fraus

1. Where ſheep are continually feeding, and folded from ſhear-time to S. *Martins* day, there the whole tythe to be payable to that Church, and caution given accordingly before the removall.

2. Within that ſpace if they change from place to place, each Church to bee ſatisfied for the time, not reckoning of leſs then thirty days; Or if they feed in one

place, and fold in another, then to divide; and ſo after rateably.

3. Milke and Cheeſe to be paid where the Beaſts feed and couch: If theſe in ſeverall places, then to divide.

fiat in caſu præmiſſo, præcipimus quod antequam oves amoveantur à paſturis vel etiam diſtrahantur, Eccleſiarum Rectoribus ſufficienter de ſolvenda decima caveatur. Quod ſi infra prædictum tempus ad diverſarũ parochiarum paſturam transferantur, quælibet Eccleſia pro rata temporis portione decimam percipiet earundem, minori 30 dierum ſpatio in rata temporis minimè computando. Si verò per totum tempus prædictum cubant in una parochia, & paſcantur continuè in alia, inter ipſas Eccleſias decima dividatur. Quod ſi poſt Feſtum S. Martini ducantur ad paſcua aliena & uſque ad tempus tonſionis in una vel diverſis parochiis, ſive in propriis paſturis dominorum ſuorum ſive alterius cujuſcunque paſcantur, habita ratione ad numerum ovium paſcua æſtimentur & ſecundum æſtimationem paſcuorum ab eorum dominis exigantur decimæ.

4. Lambs, Colts, &c. to be paid, *habita ratione ad loca diverſa ubi gignuntur, oriuntur, & ad moram quam traxerint in eiſdem:* with regard to where they were bred, kept, and ſtayed: Milk, where the quantity is ſmall, and ſo for Lambs, Colts, &c. according to the uſage of the place.

5. What ſheep live to S. *Martins* day, to be accounted for, though they be ſold to the Shambles, or die after.

6. If ſhorn in any Pariſh, the Wooll ſuppoſed there due, unleſs it were made appear to the contrary.

This I ſaid, is but ſupplementall, for parting ſtrife. Men would be ready to require their dues, and every honeſt man ſhould be as ready to pay; but occaſions requiring them to chop and change before the year came round, this was an equall and conſcionable both proviſion and præviſion, to ſet down before-hand a fore-appointed rule what either ſhould expect, and ſo part ſtrife before it was begun. A ſummary confirmation of all which before, and more diſtinct recitation of ſome things, is in another of the ſame Authour following:

Sancta

Sancta Ecclesia, &c. Cum Sacro eloquio jubente de omnibus quæ novantur per annũ nullo tempore excluso decimæ sint cum omni integritate & absque diminutione solvendæ, Liceátque unicuique capellano parochiali, Rectori sive Vicario Parochianos suos per censuram Ecclesiasticam ad solutionem decimarum compellere, Omnibus & singulis Rectoribus, Vicariis & Capellanis Parochialibus & Ecclesiarũ Parochialium Curatis per nostram Provinciam Constitutis in virtute obedientiæ mandamus firmiter injungentes, quatenus diligenter moneant & efficaciter inducant, & quilibet ipsorum in Parochia sua moneat & inducat, quod prædicti Parochiani omnes & singuli integrè & sine diminutione decimas inferiùs annotatas Ecclesiis suis persolvant: sc. decimam lactis à primo tempore suæ novationis, tam mense Augusti quàm aliis mensibus, de proventibus etiam boscorum, pannagiis sylvarum, & caterarum arborum si vendantur, vivariorum, piscariorum, fluminum, stagnorum, arborum, pecorum, columbarum, seminum, fructuum, bestiarum guarenarum, aucupitii, ortorum, curtilagiorum, lanæ, lini, vini, & grani, turbarum in locis quibus fabricantur & fodiuntur, cygnorum, caponum, aucarum, & anatum, ovorum, thenicii agrorum, apium, mellis, & ceræ, molendinorum, venationum, artificiorum, & negotiationum, necnon agnorum, vitulorum, pullorum equinorum secundum eorum valorem, &

Forasmuch as by holy Scripture all that renews yearly is to be tythed, and it is lawfull to compel men thereto; we command all Church-Governours and their Substitutes to move and inforce all under their powers to this duty: that is, to pay of milk, of the profits of wood, of mast if it be sold, of stews, ponds, rivers, pools, trees, cattle, pigeons, seeds, fruits, beasts of warren, (that is, under known custody and guard, for so the word imports) of hawking, gardens, orchards, wooll, flaxe, wine, grain, peat, swans, chicken, geese, ducks, egges, hedgerows, bees, honey, wax, mils, hunting, handicrafts, merchandise, lamb, calf, colt, and all other revenue without deduction of costs, &c. or if not, to proceed to Suspension, and Excommunication, &c.

omnium

omnium proventuum rerum aliarum de cætero ſatisfaciant competentes Eccleſiæ quibus de jure tenentur, (harping ſtill upon the right and that granted) *nullis expenſis ratione præſtationis decimarum deductis ſeu retentis, niſi tantum de præſtationis decimarum artificiorum & negotiationum. Quòd ſi monitionibus ſuis parere contempſerint, per ſuſpenſionis, Excommunicationis & interdicti ſententias eos ad præſtationem decimarum hujuſmodi compellant.*

Theſe three Conſtitutions (Decrees, Statutes, Laws, Orders, they were for payment, call them what you will,) were in one mans time, and about the parting of *Edw.* 1. and *Edw.* 2. Raigns: which (it ſeems) did not yet ſo remedy things as to prevent all future broyls. A thing impoſſible: Contentions will laſt while the world: Laws can never reach their full intended force and operation in quieting ſtrifes, and calming the ſtorms of mens rage and wrangling paſſions *full and wholly*, but ever and anon they will break out to miſchief and diſturbance: the Root is in our corrupt nature, which will not but have Spring at ſome time of the year or other to ſhoot forth and fructifie unto grief and trouble, in reſemblance of the earth, curſed for our ſakes into a proneneſs to weeds, and moſt Natural feracity of Briars and Thorns. We ſhall finde this diſpoſition generally received through the world, that moſt men are more quick and nimble of the receiving hand, then of the giving, and though they be the words of the Lord Jeſu, That it is more bleſſed to give then to receive, yet they will take the contrary by a bold inverſion, and think it better howſoever for them, to Receive then to Give. Of the ſame extent is alſo this Conſtitution of things, That where many are to pay known dues, ſome will bee found backward, ſtanding off as far as they dare till neceſſity conſtrain them to come in; Which makes it a rare inſtance but if any be to receive never ſo known dues, ſome will fall ſhort, at leaſt there muſt be wrangling with a multitude, and this ſhall be hardly avoided with ſome, whoſoever hath to deal with many. A fruit of our corrupt nature; mourn we for it in private, and ſorrowful miſchance to many of all mankind, condemned hereby to live as it were in the

Act. 20 35.

fury of a tempeſt, in the flames of paſſion burning and renewed to the mutual torment of One another: A great diſturbance of the quiet and peaceable world, and unfortunate occaſion of many troubles to many, who being of themſelves not diſpoſed to trouble, are yet (by the things they have to deal with) forced beſide their nature, and by the cunning craftineſs of thoſe that lay in wait to deceive (whoſe verſatilous ſhifts are hard to be avoided) often put upon this Dilemma, of either *gaining contention*, or *loſing right*; and if there be but one of a multitude diſpoſed to wrangle, he that hath to deal with All, muſt oppoſe that man and bear half the blame; and as ſuits and troubles increaſe with his unjuſt vexation, his ſeeming guilt increaſes alſo. If this were not, we ſhould have much toward a quiet and thereby happy world, approaching the ſimplicity of the golden age, with return of its peace, calmneſs, meekneſs, love, and a conſtant ſerenity of all things; A bleſſing ſo highly inriching, that it ſeems the wiſe Providence above does not think fit to truſt, or rather tempt us with, becauſe perhaps beyond our power to manage or bear ſo great a happineſs. Which aptneſs to contention ſhewed it ſelf ſoon after the Canons formerly made and mentioned, divers ſeeking ſhifts to evade and diſappoint the clear intent of thoſe plain and well-meant Laws, ſo plain, one would think, that there were no way left to delude or ſhift from the meaning and purpoſe laid forth in ſuch plain and perſpicuous expreſſions: Which awaked alſo ere long after that, the watchfull prudence of him ſate then in higheſt place of power and truſt for ſuch things, to caſt the beſt he could to advance ready juſtice, and yet further prevention of all diſappointments thereof. In time it follows (as in place it goes before, in the ſame *Lyndewood*) thoſe we have given, and was intended to ſtrike off their exceptions, who could not deny their dues, or to ſet them out, but (i) they

(i) Alii vero non attendentes quod Dominus Omnipotens, cujus eſt terra & plenitudo ejus, & univerſi qui habitant in ea, decimas in ſignum univerſalis Dominii ſibi reddi præcepit & pro ſuo cultu eaſdem Clericis Aſſignavit, aliquando malitioſè impediunt, impedirive faciunt vel procurant vires Eccleſiaſticos ad quos ſpectat perceptio decimarum eorúmve ſervitores quominùs liberum ingreſſum & egreſſum in prædia & à prædiis de quibus hujuſmodi decimæ proveniunt habere poſſint, &c. Alii etiam niſi prius chirothecæ vel caligæ ſeu quicquam aliud eis dentur, ſeu promittantur, decimas hujuſmodi aſportant & conſumunt, aſportarive & conſumi faciunt, ſeu aliquod damnum inferunt inferrive faciunt in eiſdem. *Synod. Mepham.* cap. Quia quidam.

would

would hinder those should fetch them from coming upon their ground, without which they could not obtain them effectually, unless they had gloves, stockings, or some other such bribes given them for the quiet delivery of what they acknowledged due; which if they had not, they would purloin or corrupt, or one way or other disappoint the true and rightful owner. O malice, whether wilt thou! O guile, when wilt thou leave working! O fraud, deceit, and wretched covetousness, when will you cease your injurious combinations! O cursed craft, and griping, shifting, over-reaching worldly-mindedness, when will you give over to disappoint the best-meant Laws of men, sith your use hath been of old to pervert even (1) the Righteous ways of the Lord! The remedy was here, as in former cases, the severity of Excommunication: *Nos igitur perversorum damnabilibus consiliis salubre remedium imponere cupientes, nihil novum statuentes, sed antiquorum Canonum statuta in medium deducentes,* (mark that, no innovasion) *universos & singulos hujusmodi instigatores, impeditores, & alios supradictos, &c.* to be fast locked under the heaviest of Church-Censures, and not released from that Bond of God, save at the houre of death, or upon promise of amendment with satisfaction. Yet this helped not all: The wit of malice that pierceth deep had found out another nest of manifold devices to hinder the course of right (2) by these four disturbances: 1. Paying but the Eleventh for the Tenth, in regard of Summer-charges, &c. 2. Dividing but not marking out the sheaf, and (3) then molesting the taker of it away as for theft. 3. Arresting the workmen for taking the convenientest way. 4. Forbidding to take what was ready, till the whole field was rid, which occasioned much spoil: Against all which is drawn the *glittering sword*, of which before of Church-censure, and the power used (lavishly) enough which should not be used upon trifling occasions. Excommunication is a heavy doom, 'tis hard it should be laid on for trifles, as the petty things of this world, or the powers of the world to come drawn forth to vile and sordid profanation, degraded below their due value, and highest worth to serve any ends which are not spiritual.

(1) Διαστρέφων τας ὁδὸς κυρίου τας εὐθείας. *Crooking his straight ways.* Act. 13. 10.

(2) Ioan Stratford tit eod cap. Erroris damnabilis

(3) *The remedy of this grievance might be that which King Richard after intended to grant by his gracious Concession of* 2 Rich. 2. cap. 4. *remembred below*, pa.

CHAP.

CHAP. XX.

HAve we yet done? no; we are now but to begin another tedious wrangling controverſie about Tythe-wood, and this indeed laſted long with much violence between the parties contending, till at laſt it ſettled (wel near) in the binding ſtatute of *Sylva cædua*. The grievance on the Churches part was (1) this; That whereas leſs charge was in manuring for Woods, and longer expectation for one Harveſt in many years, yet diſburſements for the felling, &c. were claimed to be allowed when it came, before the Tythe ſet out, and the Countrey, which was worſt, had a cuſtome for this unreaſonableneſs. No ſuch matter: The continuance of the diſeaſe did rather call for a more ſpeedy remedy, which it had, and therefore is firſt determined what *Sylva cædua* was; *Quæ cujuſcunque exiſtens generis arborum in hoc habetur ut cædatur*, ('twas let grow to be cut,) *& quæ etiam ſucciſa rurſus ex ſtirpibus aut radicibus renaſcitur*, (being cut, it grew again afreſh:) and then that All ſhould be tythed as it was felled; or if not, proceed to cenſure as before. But this it ſeems the State would not allow; for the inconveniences emergent occaſioned that complaint put up by the (2) Commons then ſitting in Parliament for remedy: And ſo the year following, *ſc.* 18 *Edw.* 3. and three years after again, *ſc.* 21 *Edw.* 3. and four years after that, 25 *Edw.* 3. and yet not full remedy till about twenty years after, *ſcil.* 45 *Edw.* 3. where ordered in Parliament, and (3) ordained: *Item*, **at the complaint of the great men and Commons, ſhewing by their Petition, that wheras they ſell their great**

(1) T it. eod. cap. Quanquam ex ſolventibus.

(2) Selden Hiſt. cap. 8. ſect. 28. & ſequ.

(3) 45 Edw. 3. ca. 3. Fulton. pa. 196.

Wood at the age of twenty yeares, or of greater age to Merchants to their own profit, or in aid of the King in his wars, Parsons and Vicars of holy Church do implead and draw the said Merchants into the Spiritual Court for the Tythes of the said Wood in the name of this word called Sylva cædua, whereby they cannot sell their Woods to the very value, to the great dammage of them and of the Realm, It is ordained and established, that a Prohibition in this case shall be granted, and upon the same an attachmeut as it hath been used before this time. This was intended a finall end, but it seems was not: some doubt sprung out afterward upon pretence this (1) was not an Act, but an Ordinance, whence a return of the former circulation of things; occasion given, discontent arising, dislike, trouble, and complaint for remedy. How it was pacified I find not, but have heard that the Statute (or but Ordinance) prevailed: A signe that it was strengthened with some (2) additionall sinew of new and fresh authority, forasmuch as what we see prevailing in Law, we may well suppose some Decree to have ushered the lawfulness thereof; and if upon altercation, the scales hanging even on both sides, one does at last evidently preponderate, some weight of authority may be thought likely to have been thrown into that scale we see settle and keep the advantage, and That is it there keeps and settles it. So likely it did here; and in and from this agitation of things, and so as they did settling, this seems observable, and not to be passed over: The Temporalty did, we see, interpose to alter and change what the Church had decreed and settled by her best power; Their temporals were their own, and they would not endure themselves to be unreasonably incroached upon by any forced impositions, which made them move again and again, and would not cease till their grievance had remedy; I doe not finde they did the like in other cases, bound up fast by other the Churches decrees before; but let them pass; Therefore (by comparison) I judge they approved what they did not dislike; Their (3) silence gave consent, and so they suffered themselves to be carried along with that stream of power they saw come from the Church

(1) Selden ubi sup. sect. 33.

(2) *Yes: there was a Petition put up in the next Parliament*, 47 Edw 3 *and by order thereupon a Prohibition to be formed in Chancery, which was formed, and that has quieted all to this day.* Co. Inst. 2 pag. 643.

(3) Qui tacet, consentire videtur. Reg. Iur. Can 43. Scienti & consentienti non fit injuria neque dolus. *Reg.* 28.

Church to carry on what it undertook, and to make a Convocation Act ſtrong enough in this caſe to ſettle a temporall ſort of things that had a touch (in that they were annexed to, and the ſupport of Gods ſervice) of ſpirituality. (For all along I deſire it may be carried in minde, The Conſent of men is the firm and only bottom whereupon temporal Right and Dominion do reſt here: Men have agreed, Therefore Thus it was; Which was here and thus compleat and perfect.) If the Temporalty had not ſtirred at all, it had been ſome ſigne they might not: If they had ſtirred and not obtained, the victory might have ſeemed over their power, not their Right, and ſo the uſe of their diſcretion to have ſtayed for their right and moved by their power for it, in a time when they were likely to obtain: But ſith they ſtirred, and obtained, and had redreſs reall and effectuall, A ſigne they might at any other time, A ſign they might have obtained, A ſign that in other things they let ſilently and quietly paſs: Which ſith they did not, *Therefore* they conſented, *Therefore* they allowed, *Therefore* what was done was authoritative by Them; *And* ſo this whole diſpoſition of things (even all *Lindewoods* Collection) had their Negative implied confirmation, in that they did not hinder, And by Conſequent even by them, (ſave in the caſe of *Sylva cædua*) the Canon was Law, Engliſh Law, and approved by all, in that none caſt a rub in the way to hinder, whereas they might, and in other caſes did, But Here they did not. The ſame Authour hath other things diſperſed, (for theſe were hitherto together under one title,) as, where (1) Prohibition is to ſell any Tythes before the 25 of *March*; After, the Rector might declare his will of the fruits, to pay his debts, or ſatisfie legacies, which was ordered in *Hen.* 3. time: And elſewhere (2) they were to be Excommunicate who ſuggeſted by Calumny to the King and his Judges, that the Eccleſiaſticall Juſticers held plea of Advowſons, Chattels, and other (temporal) things belonging to the Kings Court, *Cum iidem prælati & Judices ſuper decimis, peccatis, & exceſſibus ſuorum ſubditorum ſuæ Juriſdictionis officium, prout ad eos pertinet, exercent*; They did but do their duty and diſcharge

(1) Lib. 1. tit. de Conſuetudine. c. Nullus Rector.

(2) Lib. 5. tit. de Sententia Excommun. cap. Cùm Lapius.

their office, medling of those things that did appertain unto them, tythes among the rest. Neither was this the lesse true, or the judgement of it of no credit, because 'twas spoken of and by themselves: The thing is evidently and notoriously known, nor shall want the recognition of their jealous neighbours, the other Courts, who cannot but acknowledg the Jurisdictions here severed and cut out as it were impartially and by a thread; nor could a more proper and formal essential difference have been found out between the one and the other then this, That the one did handle *De jure Patronatus & catallis, &c.* as it ought, universally of the things of This world, and the other of the rest, and tythes among the rest.

Which lets us fitly onward to the other, the *Executive* part of these *Legislatives* hitherto, and how they had their force in the proper place designed thereunto for recovery of these things thus made Due and stated according to these Laws; but hereof I have not much to say. I was always a stranger to their proceedings, nor as to gain or lose, did I ever do or suffer, what might import favour or wrong, to be thereby holpen or hindred at any time; Onely this I have heard spoke out by the clear and loud fame of the world, That here mens rights were tried, and examined, and lost, and recovered: Pleas were heard, and sentence given, and that sentence did, or should, or might have found obedience. If all had not been right and square, as we say, exactly justifiable, If there had been any remedy at *Westminster*, or any where else that could have been thought of, If the Goddess *Themis* had had any Asylum or refuge upon Earth whereunto covetous and carnal men might have had recourse in their fears, with any hopes of protection in those affrighting tempests, that like some kinde of lightning melted their gold and silver in their purses, yea, out of their purses, No doubt but such desired shelter would have been made to with greatest diligence and truest endeavour: Questionless in what dark or remote corner soever it had hid it self above ground, men would have both sought it carefully, and found it successfully: Undoubtedly every one man would have told his neighbour,

bour, and he another, theſe more, and by degrees all; The information would ſo ſoon and luckily have propagated it ſelf, that no manner of doubt ſhould now have remained, whether ſuch a place had been or not; the path would have been more trodden to it, then to any Church or Market-place in *England*: But they knew there was none ſuch, They knew all was there, of this nature, (while it was,) firm and anſwerable; They knew thoſe ſentences were there (in their kinde,) by the approbation of all men, and Authority of the Law, valid as thoſe at *Weſtminſter*, *Pulſa dignoſcere cautus, quid ſolidum crepet*: They knew, Try whoſo would, There was that ſolidity. Civil Laws did approve, ſucceſſions of Parliament had allowed, the King had given leave, the whole State had given allowance of thoſe proceedings, and above all, the Law held them juſt and according to Law: And ſo unleſs her ſelf would contradict her ſelf, the head fall off from a principall member, or Juſtice oppoſe Righteouſneſs, They (all the Magiſtrates, Powers, Laws, and Lawyers of *England*) knew, and could not but pronounce a juſt ſentence in that Court for Tythes to be juſt: were it for ſheaf, lamb, fruit, veniſon, the tenth Thrave, or but a Tythe-lock of wooll; What a ſentence did at *Weſtminſter*, that a decree did there; What a Verdict and Judgement upon an Aſſiſe, That a concluſive determination upon mature deliberation did here; and What ſufficient ground of Right that gave of Dominion, that a man might thence claim a piece of ground or debt of money, *Hic codex eſt meus*, *Hæc domus eſt veſtra*, By equall vertue of a like ſentence here, this due charged upon every parcel of land or herd of Cattle had declared right, yea, and judgement for it, in order to execution; Or if any would not come and ſubmit, *vocetur primò*, *& ſecundò*, *& quòd ſi nec ſic ad emendationem venerit*, *Excommunicetur*, as *tertiò*; leave was given in the Charter.

Thus as to the power intruſted with the Church, I have now almoſt done; we ſee what the Supream Authority gave in Commiſſion, we ſee what uſe was made of it, we ſee what connivence or more there was of all other powers, and what obedience likely; but of this the leſs being unacquainted at

Offices:

Offices: We cannot in ſhort doubt but the Church made Laws about Tythes, that they cauſed them to be done to execution, that the State inabled them, that the whole Civill Power more then connived or permitted, appointed, authoriſed, and ſtrengthned that power whereby was acted thus according to office and duty on one part, and leave, deſire, expectation, and full truſt on the other: The reſult of all doubtleſs a full right, a clear, aſſured, undoubted, faſt, ſafe and honeſt title, as good as Any had to Any thing, and the evidence of things may diſcharge the ſuperfluity of more waſt words; If any right were anywhere, it may doubtleſs be reaſonably thought to have been unavoidably, *Here*, *Sure*, and *Thus*. There remains yet one onely thing more, ſomewhat in intention, was never quickned to full Act, but was purpoſed to give much in little, the life, ſpirits, and vertue of all before in the new intended to be purified Canon Law by *Hen.*8. authority. A thing often glanced at, but here fit to be repreſented together, and briefly and ſummarily was therefore thus: The (1) Clergy upon caſting off the yoak of forain Supremacy, and ſubmitting to that King, petitioned to have the Provinciall Synods and all the Canon Law as far as of force here, to be viewed and purged, and this to be done by thirty two perſons to be choſen by the King, whereof ſixteen of the Temporalty, ſixteen of the Clergy. The King granted readily what perhaps he had willed to be asked, and the perſons were to be members of the preſent Parliament; but becauſe ſo great a wheel could not be brought about in ſo little time, the Parliament ſitting, their deſires inlarged, were alſo granted, that it might be done after, and then ſo many Canons as ſhould continue approved, ſhould be retained, the reſt as refuſe caſt away. This was upon the matter to furniſh the Spirituall Court with a new rule, whereto as much of the old as would ſhould have ſerved the turn again but till that were done, what was in being to remain. and this ſo farre intended and minded, even with an eye to this very particular, that after when a (2) new Law was

(1) 25 Hen 8 19.

(2) *Provided always, and be it enacted by Authority aforeſaid, that this Act for Recovering of Tythes, ne any thing therein contained, ſhall take force & effect, but only untill ſuch time as the Kings Highneſſe, and ſuch other 32 perſons, which his Highneſſe ſhall name and appoint for the making and eſtabliſhing of ſuch Laws, as his Highneſſe ſhall confirm and ratifie to be called the Eccleſiaſtical Laws of the Church of England. And after the ſaid Laws ſo ratified and confirmed as is aforeſaid, that then the Tythes to be paid to every Eccleſiaſtical perſon, according to ſuch Laws, and none otherwiſe.* 27 Hen. 8. chap. 20.

needed

needed for Tythes, Proviſo was thought as fit to be added, that it ſhould obtain but till the promiſed reformation: In the mean while time ſlipping away, and little or nothing done in the buſineſs under nor after Parliament, there was need to have the power (1) renewed for longer date, which was done once and again, and ſo at length for the whole (2) time of the Kings life. K. *Edw.6.* alſo (3) continued it for three years in his time, All repealed by (4) Queen *Mary*, but revived by their (5) Maiden Siſter. The fruit I find no leſs then the work in ſome ſort done, and publiſhed in the Queens time by *J. F.* but reprinted about ten years ſince, under the title of *Reformatio legum Eccleſiaſticarum ex authoritate Regis Hen.8. inchoata, deinde per Regem Edw.6. provecta ad auctaque, &c. Londini* 1640. Where heed the title, It was but *Reformatio legum Eccleſ.* in what form ſoever the new Mint ſhould have come forth made of the old metal; Not *Inventio, Rogatio, Interrogatio, Promulgatio* of any thing anew, but its very ſelf, *Reformatio, Confirmatio*, or *Novatio*, a new ſetting out of what had been before: Not the ſending for new Tables to *Athens*, or ſuch godly and coſtly proceedings as the poor blind *Indians* muſt make, (riſing from the flat level) if it ſhall pleaſe God at any time to give them *repentance to the acknowledgement of the truth, that they may recover themſelves from the ſnare of the Devil who are taken captive by him according to his will*, To make their Native Ordinances ſquare and fit into one building, as to the new teachers maintenance; Raiſing perhaps the tenth fliece from the flock, the tenth lamb from the fold, the tenth ſheaf from the ſhock by a coſtly devotion, and out of their Own creating unto him a new Right; But to reviſe and ſettle that which was, to conſider the ways of taking up, remedy the inconveniences, remove the obſtructions, and ſcoure the wheels upon which ſuits moved, ſtill leaving the thing they found, they needed adde no more, but ſay, Thoſe rights ſhall be paid that have been. This all they intended, a Reformation, not deſtruction, which would infer need of a new creation; Not to adde an apple or an aye more, as that Poet ſaid, which I ſhall always account unjuſt (unleſs with much caution limited,)

(1) 27 Hen.8.15.
(2) 35 Hen.8 16.
(3) 2 & 3 Edw. 6.11.
(4) 1 & 2 Phil & Mar chap. 8.
(5) Eliz.1.c.1.

ted,) and would not have done for God or man. No not for Religion, which needs not injuſtice, or that any be put out of his Right for Gods ſake; And God be thanked, as things are, and the world has been devout heretofore and devoted, it needs not; Let but God and man have their Due, and Religion is well provided for. We may talk of raiſing more by fruitfull beneficence, and the good will of men ſhall move Mountains this way; But let the Law of the Goſpel have but our equall juſtice, with diſcreet adminiſtration of that which is, and it ſeems not to want already what the world can or need do for its outward ſuſtentation by what was done for it before our fathers were born. Well: this plotted Reformation as 'tis called, (to go on,) was as to the work to be performed, taken into four quarters, and each quarter again into as many Cantons, whereof every one had two Biſhops, two Divines, as many Doctors of Law, and ſo many Common Lawyers, (contributing their powers and endeavours to ſtudy, act, and overſee,) and to perfect all. Sir *Walter Haddon* and Sir *Jo. Cheek* were to fit it with ornament for the ſetting forth, which they did repreſenting it to the world, (and ſo it is now to be ſeen,) dreſſed up in a very fair Robe of curious Romane language: As to Authority publiſhed it was with two Manifeſtors of the two Princes, willing it (1) to be ſtudied and followed in Univerſities and Courts, 'tis hard to give the reaſon why it was not; All which was needfull to know, that we might infer of what power and authority is that we ſhall alledge. One (2) title is, *de Decimis*, having under it nineteen Chapters as followeth:

(1) Strictè præcipientes ut his noſtris Conſtitutionibus vos omnes & ſinguli tàm in judiciis quàm in Gymnaſiis utamini. *Hen. 8. in Epiſt præfixa.*

(2) Pa. 215.

Cap. 1. *Decimas eſſe ſolvendas.*

Quoniam Dominus noſter Jeſus Chriſtus hanc ipſe legem ſancivit, ut qui doctrinam inter homines conferunt, ex docendi labore præſidia vitæ metant, & ejuſdem Domini noſtri teſtificatione, Digni ſunt mercede quicunque ſunt in opere; Porrò divinum jus ſcriptum bovi trituranti cum os obligari non ſinat, nobis exemplum divinæ clementiæ repetendum eſt, & validè videndum, ne vel nimia noſtrorum hominum avaritia vel negligentia fiat ut Eccleſiarum noſtrarum miniſtris juſti

juſti & convenientes fructus ex ſanctiſſimorum occupatione munerum non ſuppeditentur.

Cap. 2. *Decimæ prædiales quo modo ſolvi debent.*

Igitur authoritate noſtra conſtitutum ſit, ut omnes ſingulique ſubditi noſtri, locis & temporibus deſignatis & legitimis, decimas omnium rerum ex prædiis provenientium miniſtris ſeponant, ſive fœnum ſint ſive fruges qualeſcunque quorumcunque locorum, ſive Crocus, ſive Canabis, ſive linum, ſive ſint olera vel arborum fructus, &c. and ſo on to the exactneſs of the Phariſee to tythe All. Of Mills, Turves, Coles, Quarries, Paſtures, (Agiſtment cattle I think they mean,) the breed of Cows, Swine, Sheep, Mares, Swans, Hens, Geeſe, Pigeons, Conies, Deer, Fiſh, Bees, &c. Reviſing and expounding the Act of Parliament a little before made and approving it. But becauſe the reſt at large may take up too much room, therefore take but the Quinteſſence as it were extracted in the Contents of the Chapters.

Cap. 3. *Animalium decima annua quomodo juxta numeri rationem ſolvatur.* How the tenth ſhall be reckoned.

Cap. 4. *Diviſio decimarum qualis ſit.*

Cap. 5. *Decima rerum alienatarum quomodo recuperetur.*

Cap. 7. *De Jure Vicariorum.*

Cap. 8. *Quando miniſter ex proventibus Eccleſiæ ali non poteſt:* Directing and counſelling to all lawfull means can be thought on for augmentation.

Cap. 10. *De decimis colligendis in aliena parochia.*

Cap. 11. *De locis quiſunt à decimis liberi.*

Cap. 13. *Decimæ prædiales & perſonales quomodo ſolvendæ.*

Cap. 14. *Solvendas eſſe decimas perſonales.*

Cap. 15. *Proprietarii quomodo decimas ſolvent.*

Cap. 16. *Decimas utriuſque generis ſolvendas eſſe,* ſc. both prædiall and perſonall, if they ariſe due from the ſame man.

Cap. 17. *Causa decimarum inter ipsos ministros non progredietur.*
Cap. 18. *Consuetudo non solvendi decimas invalida sit.*

It might have been convenient to have represented here a full transcription of these things; but there is intimation where they may be had for use, which may be enough, where brevity is studied. These Provisions of a Law shew clearly what the state then meant, as to Reformation, and even in this particular (if the purpose of the statute had been obtained for abolishing the old Canons,) and how inviolable the right of Tythes should have been Then by their profound wisdome and discreet piety, which is also better seen by account from these publick consultations then any private informations. The results they were of a severe and searching reformation, wherein as many stones had been moved (hoping thereby to settle others) as in any tumbling Age; and for the distressed Church what men durst do, if it had been judged convenient, needs no other demonstration then what was done: But profound wisdome joyned with much piety, and a conscionable regard (proceeding in the fear of God) not to destroy what they meant to reform, or to purge out corrupt humours to the death of the patient, made them soberly carefull we see, and tenderly jealous not to meddle too far here, and for fear of darkness over all discreetly advised to let none of the oyle be medled with that kept the Parish Lamp burning, but rather gave hope of adding more where need was, (with encouragement to bring it in,) setting open a door to let in other supplies of needfull expence for these Lamps dispersed all abroad, if God should so move the hearts of those that loved the Tabernacle and the light thereof, to bring any offering; To strip all having been a thought of such horrid injustice and barbarous impiety, joyned with Improvidence (as to Religion) and imprudence into the bargain, that in likelihood truth might have been in danger of perishing from the earth by this time, and according to ordinary dispensations of Providence, we have now had little enough of Law or Gospel to take up consultations for the maintenance

of

of, by that the Bible might have been near a ſtranger, if this had prevailed: But into their ſoft and tender boſomes, by the Grace of God, ſuch thoughts had not leave and power to enter.

Why the tree thus planted hath not been known to bear fruit, or this new body thus framed, not received to be practiſed by, is, I ſaid, hard to gueſs; the beſt reaſon I can think of is for want of Parliamentary allowance and ſubſequent confirmation, for nought elſe ſee I wanting: yet as ſtrange that what a Parliament had appointed to be done, and being done, and accordingly, ſhould not have therewith what ſtrength it could give. But ſo it has been, a dead letter hitherto, onely living in the good wiſhes of knowing good men, that it were quickned to full life, and the laſt Eccleſiaſticall piece (I call it ſo in regard of the *materia prima*, out of which it was made, the end whereat it aimed, the things it directs about, and its diſtinct ſtanding off from the more common or ſecular,) that, of this kinde, our Common-wealth hath afforded: Not unfitly reduced to this head of Eccleſiaſtick, whoſe proceedings have been ſuch by vertue of due power throughout this buſineſs, that it needs no protection of Hyperbole to excuſe that all have either liked or willed; Kings, States, Parliaments, Judges, Lord, Laws, not ſparing their vote of approbation, (to this particular ſtill I mean) and all that have, have looked on either to allow or confirm. With this one intimation more I cloſe up the point, that wheras this new body is not yet it ſeems authoriſed perfectly, till it ſhal be, All the old (including thoſe alſo I made uſe of before) are in force by a concluding Proviſo of that firſt ſtatute (25 *Hen.* 8. 19.) where the whole buſineſs was ſtarted. The words are theſe: **Provided alſo, that ſuch Canons, Conſtitutions, Ordinances, and Synodals Provincial, being already made, which be not contrariant nor repugnant to the Lawes, Statutes, and Cuſtomes of this Realm, nor to the damage or hurt of the Kings Preroga-tive Royal, ſhall now ſtill be uſed and executed, as they were afore the making of this Act till ſuch time as they be viewed, ſearched, or otherwiſe ordered and determined**

of by the ſaid thirty two perſons, or the more part of them according to the tenour, form, and effect of this preſent Act. But this not yet done, and therefore all the former Canons yet of force till, &c. and that by this Authority.

CHAP. XXI.

AND hitherto then upon the proper Stage: Let us next look upon the lookers on, and ſee whether the Neighbour ſecular powers have either not looked this way, or ſaid nothing, or not in allowance of what there: The Church impowered as before, hath acted as hath been ſeen, to a full and faſt determination of Right according to what ſhe had in Commiſſion, (or if ſhe exceeded or went too far, was checked, as hath been ſhewed alſo:) But now hath the ſecular ſtate added no collaterall ſtrength, to connive at leaſt, and more, at what hath beene there done? Surely ſo: As they have done their own buſineſs, Hers alſo having been taken in by the by, ſometimes in direct aſſertion, oftner by glance and occaſionall reflexe, but by ſuppoſition conſtantly ever; That ſuppoſition alſo often expreſſed, as uſes to be in collaterall, not purpoſed mention of things, but never but underſtood and meant, as may be known by the evidence of things, as they have been done, and are left remembred; Their very (1) ſilence (if nought elſe were) implying conſent, and ſuffering the Eccleſiaſticall to continue medling with things of Temporall worth, and not forbidding, being ſtrong evidence that they did allow. Sometimes indeed the tranſgreſſion of limits hath been queſtioned, and this the true ground of All Prohibitions

(1) Sub factis autem moraliter veniunt & non facta conſiderata cum debitis circumſtantiis. Sic qui ſciens & præſens tacet conſentire videtur, niſi circumſtantiæ oſtendant quo minus loquatur, metu eum vel alio caſu impediri. *Grot. de Iure Bell. l. 2. c. 4. ſect. 5.*

hibitions, when the Church would meddle of things of (1) lay fee, as the general word was, *de rebus tangentibus Coronam & dignitatem noſtram*, for then the King would forbid that extravagancy, and ſtop the proceeding, as reaſon he ſhould: But if keeping the due bounds, and not going beſides the nature of allowed buſineſſes, *in ſpiritualibus & annexis*; Now the Juriſdiction it ſelf was never queſtioned, but things reputed immoveably firm that had their determination here, and the watchfull eye of a jealous neighbour either ſpied nothing, or ſaid nothing, (and in that much:) or if any thing, by inſinuation, All was well; *Hucuſque*, and contentment there ſhould be no Prohibition.

(1) Regulariter verum eſt, quod judex Clericus cognitionem non habet de Laico feodo alicujus. *Bracton de Except. cap* 12. *fol.* 3

Rex illis Judicibus Eccleſiaſticis ſalutem. Prohibeo vobis ne teneatis Placitum in Curia Chriſtianitatis quod eſt inter N & R de Laico Feodo prædicti R. unde ipſe queritur quod N. eum trahit in placitum in Curia Chriſtianitatis coram vobis, quia placitum illud ſpectat ad Coronam & dignitatem meam. *Glanvill lib.* 12 *cap.* 21. *& vid cap. Sequ. Bracton de Except. cap.* 3. *&* 4. *vet. tot Flet. lib.* 6. *cap.* 37. *ſect.* 5. *& alibi paſſim.*

But to come to ſome particulars, having ſecular and more immediate Royall influence, (in giving of which I doubt not but the performance of promiſe ſhall farre exceed the meaſure of my undertaking, or reaſonable expectation, all things conſidered, and that the proper Repoſitory of ſuch things from their nature is elſewhere:) and I begin with the great Charter, one of the moſt Authoritative Inſtruments, and ſolemn ſealed and proclaimed deeds and Laws that our State has, or the Lawyers themſelves know where to ſeek for. The beginning thereof is this, *Edward* by the Grace of God King of *England*, *&c.* We have ſeen the Charter of the Lord *Henry*, ſometime K. of *England*, our Father, of the Liberties of *England* in theſe words: *Henry*, &c. which we confirm.)

Chap. 1. **Firſt, we have granted to God, and by our preſent Charter, have confirmed for us and our heires for ever, that the Church of** England **ſhall be free, and ſhall have all her whole Rights, and Liberties inviolable. We have granted alſo, and given to all the Free-men of our Realme, for us and our heirs for ever, theſe Liberties, &c.**

This is a little more emphaticall in the Latine, which for the better countenancing both of the teſtimony and the thing,

I chooſe to repreſent from a fair Manuſcript in the publick (1) Library of *Oxford*, where thus: *Imprimis conceſſimus Deo, & hac præſenti Carta confirmavimus pro nobis & hæredibus noſtris imperpetuum, quòd Eccleſia Anglicana libera ſit, & habeat (2) Jura ſua integra, & libertates ſuas illæſas. Conceſſimus etiam omnibus liberis hominibus, &c.* This is that Charter in the ninth Chapter whereof is confirmed the Charter of the City of *London*; in the fourteenth, **That none ſhall be amerced unreaſonably, but** *ſalvo contenemento*, as he may be able to bear; in the twenty ninth, **That no man ſhall be outed of his Frée-hold but by courſe of Law**; (ſo much ſtood upon formerly, lately, and juſtly, and ever to be ſtood upon:) Every line whereof might have been written with ſome of the ſubjects bloud it coſt; and in anſwerable price of worth containeth ſome piece or other of a firm wall to keep out Invaſion, and hindering will and power gotten ſtrong from entring upon and trampling downe the peoples Libertie; Wherein note two things granted to the Church, *ſc.* That ſhe ſhould have all her 1. Rights, 2. Liberties: Thoſe Rights, Intire: Thoſe Liberties, Inviolable. What were firſt her Rights? (3) Tythes, no queſtion: Even then: generally due, and univerſally paid, and ſo for a long time had been: There needed no more then, or the Ages before, but to prove the land in the Pariſh of *Dale*, and the Tythes were caſt upon the Church of *Dale* without any Evaſion; And this ſo true and known, that there is none from the information before or other acquaintance with the ſtate of things as they were, truly informed, but muſt grant as much as I ſay without hæſitation: And theſe rights were alſo granted Intire. Next, what were her Liberties? A volumne were here little enough, and I had once thought of laying together Many. But to our preſent purpoſe let a few Acts of Parliament expound what one priviledge at leaſt was. In 18 *Edw.* 3. there is a ſtatute for (4) the Clergy, and it was granted in regard of a Triennial diſme given that Martiall Prince to further him in his Wars for *France*. In the ſixth Chapter, whereof is mention of ſome Juſticers appointed to the impeachment of Eccleſiaſticall

(1) S t. 8. Iur.

(2) That is, That all Eccleſiaſtical perſons ſhall enjoy all their lawfull Iuriſdictions, and other theyr rights wholly without any diminution or ſubtraction whatſoever; Cook Inſtit. 2 pa 3.

(3) The Councel of Lenham had ſtyled them before Deo debita Iura. cap. 1. in Spelm. Concil. pag 507. and K. Knout likewiſe in his Laws, cap. 8. in Lambard. Archai. pa. 101. And before either, K. Alfreds League with the Danes: Dei Rectitudines. Spelm. pa. 377. The whole face and condition of things repreſents it ſelf ſuch, that if any thing were, Theſe were new Rights.

(4) Fulton p. 143

call

tall Jurisdiction, (of (1) Tythes among other things, why may we not well understand?) and is against the Franchise, this Statute says, of the Charter. Let the words speak their own sense. *Item*, **Whereas Commissions be newly made to divers Justices that they shall make inquiries upon Judges of holy Church, whether they have made suit prosecute or excessive in causes testamentarie and other (causes decimall, as notoriously doe belong hither as testamentarie, a hundred proofs are for it) which (yet) notoriously pertaineth to the cognizance of holy Church, the said Justices have inquired and caused to bee indicted Judges of holy Church; in blemishing of the Franchise of holy Church, that such Commission be repealed**, &c. See here what Franchise is in part, *sc.* to have Ecclesiastical Jurisdiction free, proved by that to disturb it is a breach or blemish of the Franchise. Next take another gloss in the plain text of 1 *Rich.* 13. where (2) **The Prelates and Clergy of this Realm do greatly complain them for that the people of holy Church, pursuing (3) in the Spirituall Court for their Tythes (there is the Jurisdiction and this particular asserted) and their other things which of right ought, (there's more then possession, Due,) and of old times were wont to pertain to the same Spiritual Court, (there's continuance of time, or prescription) and that the Judges of holy Church having cognizance in such causes, & other persons thereof medling according to the Law, be maliciously and unduly for this cause indicted, imprisoned, and by secular power horribly oppressed, &c. against the Liberties and Franchises of holie Church: Wherefore it is assented that all such Obligations shall be of no value**, &c. Here another statute interprets what Liberty and Franchise is by that the clogging of Ecclesiasticall Jurisdiction, in this matter of Tythes was a breach of that Franchise; and so after when **the *Cistertians* endeavoured to exempt their Fermours Lands as well as their own from paying Tythes, that one power could not fetch them in, this was again against the Franchise**, as (4) complained in Parliament, 2 *Hen.* 4. 4. And lastly, a (5) National Councel represented as one of their grievances at *London*,

(1) The knowledge of all causes testamentary, causes of matrimony and divorces, rights of Tythes, Oblations, and obventions by the goodness of Princes of this Realm, and by the Laws and Customes of the same, appertaineth to the Spiritual Iurisdiction of this Realm, &c. *Stat.* 24 *Hen.* 8. 2.

(2) *Id. pa.* 200.

(3) That this apprehension may not seem a mistake, this very Chapter I since alledged heretofore to prove that the proper scene of trial of tythes is the Ecclesiastical Courts by M. *Selden* in his parallel. *par.* 2. *Dial.* 1. *fol.* 6.

(4) Alledged hereafter.

(5) The Annals of *Burton* cited by M. *Selden* of Tythes, *ca.* 14. *pa.* 419.

London, 21 *Hen.* 3. The over-laviſh uſe of the *Indicavit*, whereby the Kings Judges would firſt determine what tythes were due, to what Church, and this was *in Regno Angliæ in præjudicium libertatis Eccleſiaſticæ*. Which things may together ſhew fully enough, what the breach of Franchiſe was, and by conſequent what the Franchiſe it ſelf, by the beſt which is publick interpretation: Whence alſo likelieſt this was the meaning of the Grant: That the Church have all her Rights, that is, Tythes (with others) intire: and all her Franchiſes, that is, Juriſdiction, (Decimal, as for other things, to bring them in,) Inviolable; no leſs then which could be meant by any likely conſtruction. Or otherwiſe Thus; and the ſtrength of this title may here have received two ways augmentation. 1. As Tythes were a Right and ſo warranted and intended to remain ſuch. 2. As they came within the compaſs of Eccleſiaſticall Juriſdiction, which, if they were given before, and any Law had aſſured them, (as many had doubtleſs,) This was then here allowed to bring them in: And ſo were it perſonall or prædiall, lamb or wooll, ſheaf or heap, muſt not now then have been withholden, but were due, and muſt be paid, yea, by the great Charter, yea, while that Charter was in force, could not be denyed, for that herein were confirmed, to the Church all her Rights (Tythes) intire, All her Liberties, (Juriſdiction, Decimal) inviolable; and Wrong muſt have been to deprive her of thoſe Rights, (of theſe Tythes,) of this Franchiſe, (of that Juriſdiction.) Or otherwiſe laſtly, Thus: Let but the Juriſdiction, that Liberty, be ſuppoſed to have remained, and this would bring in all the reſt: For, let the Church but have been heard to ſpeak out in that which ſome accounted then doubtleſs as things were (in a qualified ſenſe) the voice of God, which was the voice of the Law, and this could have ſpoken out nothing but roundly and home for Tythes: For they were Due, then Due, and ſo Due: Let that dead letter be then but thus have been quickned by lively ſentence, and the Law be heard ſpeak out according to truth and righteouſneſs, and the voice could be nothing elſe but for deſired Juſtice, Truth, and Them.

Of

Of what eſtimation this Charter yet is and duly ought to be with all the good people of *England*, much need not be ſaid: *Magna fuit quondam magnæ reverentia Chartæ*, as one ſaid, It uſed to be looked upon with no other but an eye of reverence. It coſt the ſubject both wealth, and treaſure, and blows, and bloud, before it could be obtained; And after at the rate of the lives of thouſands, and by the prudent and ſucceſsfull interceſſion of ſome Church-Miniſters (who perſwaded and prevailed with the King to paſs it,) as well as any other; it was granted, it had the moſt (1) ſolemn preſent confirmation that it now appears any publick Inſtrument of this ſtate ever had. It has had (2) more then 30 other confirmations in Parliament ſince: For, for divers (3) Kings Raigns after ſucceſſively, till by repetition that reverence before ſpoken of, was bred and rooted in all mens hearts toward it; one of the firſt things ſtill done in that moſt honourable meeting was to confirm This, and the Charter of the Foreſt; with no leſs regard of care and love, then in Councels and Synods had been wont to be ſhewed to the doctrine of Unity and Trinity in a Deity, by keeping the belief thereof in faith & freſh memory by ſome of the firſt Articles. In preſent, ſeverall draughts were (4) taken forth, and the exemplifications ſent under the Great Seal to the great men of the Realm, one of which yet is, (or lately was) at *Lambeth*, and (5) after renewed under the ſame Signature again, as well to the Juſtices of the Foreſt as to

(1) The Archbiſhop, Biſhops, and the reſt of the Prelates pontifically apparelled, pronounced that curſe with tapers burning, which when they had thrown away upon the pavement, where they lay extinguiſhed and ſmoaking, the King (having laid his hand on his breaſt all the while,) ſware to keep all Liberties upon pain of that execratory ſentence, As he was a Man, a Chriſtian, a Knight, and a King anointed and crowned. *Speed Hiſt. li. 9. c. 9. fol. 82.* What the curſe was, who was preſent, againſt whom thundred, that ſhould either break it, or bring in another, or obſerve it being brought, with the ſigning and ſealing, may be ſeen in the old Edition of the ſtatutes, printed 1543. at the end of *Hen. 3.* and in *Flet. lib. 2. cap. 42. pa. 93.*

(2) The Lord *Cooke* has computed to thirty two (in the Proeme to *Inſt. 2.*) I beleeve more; *ſc.* twice in *Hen.* the thirds time: that is, *Anno 9.* at Weſtminſter, and *Anno 52.* at Marleborough. *cap. 5.* Alſo 25 *Edw 1. cap. 11.* 28 *Edw. 1. cap. 1. 1 Edw. 3 cap. 1. 2 & 3 Edw. 3 cap. 1. 4 Edw 3 cap. 1.*

Memorand. And beſide theſe ratifications of the Charters, and thereby the Churches Rights and Liberties in them, Tythes (in the way ſhown) with the reſt; There were many diſtinct Ratifications in ſeverall either Chapters or Clauſes beſides of the ſame Churches Rights and Liberties. As in the Statute for the Clergy in 27 *Edw. 3. chap. 1. in* 50 *Edw 3. chap. 1. 1 Rich 2. 1. 2 Rich 2. 1. 3 Ric. 2. 1. 5 Rich. 2. 1. &c.*

(3) Sc. in *Edw. 1.* time: *Edw. 3. Rich 2. Hen. 4.* till about the end of *Hen 5.* Where it occurs often.

(4) *Cook Vbi Supra pa. 4.*

(5) 25 Edw. 1. c. 1

the Sheriffs and other publik Officers, and to all the Cities of the Land, with Writs to have them publiſhed, and order to (1) every Cathedral to read them twice every year to the people. And not onely their Effata or moſt reverenced contents equalled by Parliament to the Oracles of the Common Law; But whereas *Judicia* are *Iuris dicta*, and ſhould binde if any thing, yet all ſentences given in Court (2) contrary hereto, are declared null, and of no force, and that by ſentence of Parliament as ſoon as they are given. In preſent all were Excommunicate that were infringers therof, even with ſevere and bitter devotion; all the (3) powers that men on earth could deviſe or implore from Heaven being uſed to procure and work terrour; And for the future, it was appointed (4) this Excommunication ſhould be renewed twice a year in every Cathedral, and (5) Proclamation twice as often as that made by the Sheriffe in his County-Court* (*ſc.* after *Michaelmas*, *Chriſtmas*, *Eaſter*, and *Midſummer*,) Three ſubſtantiall men being then choſen to be Juſtices by vertue of that Commiſſion to inquire of tranſgreſſions, and meerly by vertue of that Writ without any other power, they were ſuch Juſtices. 'Tis, in ſhort, (6) the cream and quinteſſence of the whole bulk of the Politicks of our Nation, the Charter of the peoples right, the hedge of their property, the fence of their liberty, the ſtrength of their ſecurity, and the chief bottome of our Laws: Which in the dawning of our late troubles about twenty years ſince, had the violation thereof, all know, looked upon with ſo jealous an eye, that

(1) Ib. cap. 3.

(2) Ib. cap. 2. *and* M Charta ca. ult. Quæ contra jus fiunt debent utique pro infectis haberi. Reg. Iur. Canon. 64.

(3) Authoritate Dei, Patris Omnipotentis, Filii, & Sp. Sancti, &c. Flet Vbi ſup.

(4) *And that all Archbiſhops and Biſhops ſhall pronounce the ſentence of Excommunication againſt all thoſe that by word, deed, or counſell, do contrary to the foreſaid Charters, or that in any point breake or undermine. And that the ſaid curſes be twice a year denounced and publiſhed by the Prelates as aforeſaid 25 Edw. 1. cap. 4. With another curſe at the end (to bind things as faſt as might be) and Excommunication denounced againſt thoſe that ſhould not obſerve the ſeven Articles of that Confeſſion, (of which that was the fourth:)* In the Name of the Father, the Son, and the Holy Ghoſt &c. *in the ſaid old Edition of* 1543.

(5) Artic. Super Chart cap. 2. 28 Edw. 1.

(6) Iam aderat annus ſalutis humanæ 1226, & nonus cum regnare cœpit Henricus, quo anno Concilium Principum eſt habitum: Eo in Concilio de Regis pariter & principum ſententia, non parum multa privilegia ordini ſacerdotali, atque reliquo populo irrogata ſunt, multæque leges latæ, quas Reges qui ſecuti ſunt, ita approbárunt, ut inde bona pars juris collecta ſit, quemadmodum extat in eo libello cujus inſcriptio eſt, Magna Charta, & altera, vulgò de Foreſta, id eſt, de ferarum ſaltibus. *Polyd. Virg. Angl. Hiſt. lib. 16. pa. 290.*

It was for the moſt part declaratory of the principall grounds of the Fundamental Laws of England, *and for the reſidue it is additional to ſupply ſome defects of the Common Law, &c.* Cook Inſtit. 2. in Procem. pag. 2. *So of King* Iohns *Charters, this Baronia reſtabilita*——Schedulam quæ ex parte maxima leges antiquas, & regni conſuetudines continebat. Matth. Par. ad an. 1215. pa. 244. *And ſee* R. Twiſden, Præfat ad Leg. Guil. r. & Hen. 1. pa. 157.

nothing

nothing more egged the people to inforce the Petition of Right (to regain the breaches made whereinto was a part of that Petition,) then a fear they had wrong done them in this their chiefeſt and choiceſt love, which let be but read, and it alone will ſhew what eſtimation quiet ſubjects had thereof in thoſe calm times, and what advantage has been made of both ſince, all know. A Volumne were here again too little: and yet the beginning was plainly, fully, and home for theſe Rights among other: And the Conceſſion of them, which is more, made over, as 'twere, into another world, *into the* (1) *Hands of God*, that man ſhould not dare recal or lay his hand upon that was ſo, and *To God was Given. Conceſſimus Deo & hac præſenti Charta noſtra confirmavimus pro nobis, &c. quod Eccleſia, &c.* Whereas the peoples Liberties were given only into their Own hands. What will, if this will not, preſerve them intire as they were given? What will render them inviolable, if not the ſacred Omnipotent hand of the (2) moſt High God, to whoſe protection, power, and ſafeguard, as well as honour and glory, they were by our Anceſtours (who thought themſelves awake in the buſineſs of the Charter) commended? and they thought to equall it with the higheſt offence, that of the Gyants heretofore making attempts againſt Heaven by their daring preſumption, if any ſhould at any time preſume to rob them from That Hand to *Which* they were, and *So* given. Many yet alledge and take a part: The ninth chap. in (3) behalf of the City of *London*: the twenty ninth for a Legall triall of Tythes; and the Petition of Right joyned thereto for liberty and property; that none be outed of his Free-hold but by due proceſs of Law, and many exclamations, bitter ſufferings, hard impriſonments have been, perhaps ought to be rather then loſe their childes portion, in that great Charter, the inriching due Birth-right of every Engliſhman. But is not one mans Right as good as anothers? Does not any injury ſit to as much diſcontent, irkſomneſs and wrong upon the galled back of one ſort of ſenſible perſons, as it doth of another? Or, may not I cry for my Childes part as well as my Brother? The deſpiſed Miniſter of Jeſus Chriſt. Can he have no wrong?

(1) *When anything is granted for God, it is deemed in law to be granted to God; and whatſoever is granted to his Church for his honour, & the maintenance of his reſt, given and ſervice, is granted for and to God.* Quod datum eſt Eccleſiæ datum eſt Deo. Cook Inſtit. 2. pa. 2 *upon this Charter.*

(2) Semel Deo dicatum non eſt ad uſus humanos ulterius transferendum. Reg. Jur. 51.

(3) *Whoſe old liberties and cuſtoms are there confirmed: and likewiſe of all other Cities, Towns, Boroughs, &c.*

Or has he no right? Or is not he perhaps a Chriſtian, an Engliſh man, a Man, as well as all his kindred, that any private ſpleen, envy, malice, greedy covetouſneſſe, ſelf-love, or other wrongful and injurious paſſion ſhould work in the boſom of his fellow-Chriſtian and Neighbour (who yet loves *His* Own well enough, and can be content to ſtretch all his powers to make the moſt and beſt of it) to wiſh Him out of His, or endeavour, if it be in his power, to put him out, Quarrelling with him to reſt contented to ſee his name ſtrucken out of the Common Fathers Will; and he ſhall be yet in more danger, if he ſtrive or cry, or do any thing but ſit ſtill and ſubmit, and be quiet while his part of the Charter is taken from him! May not this very ſame evidence, if the poor Preacher and Servant of Jeſus Chriſt, who taketh cure of ſouls for his Maſter, *feeding the flock of God committed to his charge, not by conſtraint, but willingly, not for filthy lucre, but of a ready minde*, have any part therein, be as honeſty, reaſonably, piouſly, ſafely, and Chriſtian or Engliſh man-like preſſed home, and contended for earneſtly in his behalf, as for a mans right, a mans eſtate, a mans property? Perhaps a ſingle, ſimple, meer natural man, that as ſuch, by any thing he poſſeſſes is bound to little, that he knows of, ſave to make himſelf ready, eat and drink, keep himſelf quiet or merry, expect the quarter or half years day, tell his rent when it comes in, and in the mean while is at leiſure for Any thing: To ſport and play, game and riot, perhaps for (1) *gluttony and drunkenneſſe, chambering and wantonneſſe, luſt and envying*; and other ſuch things (2) *for which the wrath of God is wont to come upon the children of diſobedience*. For ſuch are known to live among us and enjoy their dear Own without diſturbance, (which is worſe, in Chriſtian Communion too,) and relinquiſhing neither hopes of Law, nor Goſpel, (not our Law I mean,) to ſee the ſtreams of *Pactolus* flow, their heaps of wealth come tumbling in on every ſide, which they abuſe (God forgive them) to be the fewel of their ſins, to keep their vices and iniquities not onely burning, but flaming in the ſight of the world, (3) *Working the will of the Gentiles, and walking in all laſciviouſneſs, luſts, exceſs of wine, revellings, banquet-*

1 Pet. 5. 2.

(1) Rom 13. 13.

(2) Col. 3. 6.

(3) 1 Pet. 4. 3, 4.

Banquettings and abominable idolatries, wondring that others (who by the Grace of God have eſcaped the pollutions that are in the world through theſe luſts, and old things are paſt away with them, all things are become new) *run not with them*, as formerly, *into the ſame exceſs of riot, ſpeaking evill of them for it*, as the Apoſtle ſays: And ſhall theſe I ſay, do thus, and no man moleſt them, or trouble them, or queſtion (as God forbid they ſhould) for craving, having, and miſſpending what they have Civil right to, while the (1) *Labourer is kept ſhort of his hire*, (2) *The mouth of the Oxe muzzled that treadeth the mowe*, and kept ſhort of his due allowance; Gods Miniſter onely is pittanced of what may keep him alive and honeſt together, and they that take themſelves for good men, doubt whether they may ſubtract from him his part of the Charter. He is, I aver, He is one of the moſt Neceſſary men in his Pariſh, for diſcharge of duty he would ſooneſt be miſſed of All, if he ſhould be abſent; As great expectation is of Him while he is there, and there is neither Free-holder nor Copy-holder, Yeoman, Gentleman, or ſcarce Any other, who in ſickneſs, abſence, excluſion, or ſo, would be more miſſed of the Neighbour-hood, of any of whom they expect no more then what duly they have of him, and more: And what wiſdom or equity were it then to chuſe out Him to be robbed at the root, deſpoiled of his right, ſhrunk in thoſe ſinews muſt give all his deſigns or godly good works, life, power and motion in this world, and deſire his means of living to be withholden from him due by Law, While other that would very likely do leſs good with it, certainly have leſs duty expected of them for it, have enough and to ſpare, yea, *Fruges conſumere nati*, men born onely to live and ſpend, have plenty, that nor own, nor pretend to own any neceſſary, fitting, honeſt, manly imployment to the furthering of that common good, whereof they reap the chiefeſt benefit, But (like drones) ſuck the ſweet, and make ſport with the ſweat of other mens browes, wearing Mannours on their backs, and pouring Farms down their throats, ſwimming in golden Lard up to the Chin, as he ſaid, live at eaſe in Sion, neither Fiſh nor Fleſh, having nothing of Human

(1) Matth 10 8. chap. 10. 10. Luk. 10. 7. 1 Tim 5 18

(2) 1 Cor. 9. 9. 1 Tim. 5. 18. Deut. 25 4.

Human or Christian, Lay or Ecclesiastical, Magistrate or Officer, publick or private, charged or they think fit should be charged on their account to God or man, Church or State. I speak not this, that they should be deprived of any thing is Theirs, or to stir up discontented fault-finders against them, which I assure my self cannot be attempted without sedition in the State, or sin to their souls who should be so troublesome; Let every Swine have his own dunghil, every man have his Own, as well *as do*(1) *what he listeth therewith*, as the Scripture says; if He mis-spend, (2) God shall judge: But comparatively, If These, then Those, if They have, and none subtract or deny, how much less, or with equall necessity, not from him that (3) *laboureth more abundantly then they all*, as the Apostle speaketh; and in another place is (4) *worthy of double honour, labouring still in the word and doctrine.* God forbid any should have wrong, or not their right, be it much or little, and Who or Whatsoever: But is this sort of men Onely inconsiderable, to be shut out of door when right is distributing, and they alone are Chidden if they ask their Due, or expect their Right from the Petition of Right, and the every man else inriching Charter: *Hen quòd literulas stulti docuêre parentes!* Nay, will they not blame their calling that deprives them of common equity, and shuts them out from the open Hall of Justice, and they may not claim their due in Every ones Inheritance? It grieves me to consider, and I wonder it should be so: The same men that urge those publick Concessions so earnestly, and would suffer more rather then lose any of their little shares in this universal Grant, yet cry out against Tythes without moderation or measure, take on and complain as of a burden insupportable, and when their own parts are taken out, They may not be restrained of their liberty or abridged of their property, (God forbid they should;) Other mens right or liberties, they may be stamped under feet, their Dues are inconsiderable, no dear Own by their Property. I hope and believe they have been hitherto but mistaken in judgement, and thinking Tythes to be no other but the impositions of some later Statutes, or the usurpations of the Consistory;

(1) Mat. 20. 15.

(2) *Who are thou that judgest one other mans servant? to his own Master he standeth or falleth* Rom. 14. 4. *And, Why dost thou judge thy Brother? or, why dost thou set at nought thy Brother? we shall all stand before the judgement seat of Christ. For it is written, As I live, saith the Lord, Every knee shall bow to Me, and every tongue shall confess to God. So then every one of us shall give account of himself to God,* ver. 10, 11, 12.

(3) 1 Cor. 15. 10.

(4) 1 Tim. 5. 17.

no

no wonder or blame they would have tyranny aboliſhed, and exactions removed, that every man may enjoy his dear Own, and no man uſurp upon his neighbour in any the ſmalleſt matter: But would they conſider what deep and ſettled, and al over-ſpread radication theſe claims have in all the Civil laws of the land; How the Parliament allowes them, the Petition of Right involves them, the Canon gave them, the Charter confirmed them, the Common Law ſet them up; and all the Politicks of the Nation combine and conjoyn their ſtrength for their legal Dueneſs, as of Any thing: Could they look (paſt ſome ſingle Order or Act,) into the depth of *that diffuſed and far-ſpreading Rule and Giver of all Right with us, the Soveraign Law*, and there finde that what gives all men right in this Nation, gives here with as undoubted aſſurance, and a manifold accumulation of more ſtrength and evidence, They would then, I truſt, change their notes, or as the word uſes to be, ſing us another ſong; They would not betray their diſcretion to ſuch neceſſary diſgrace as muſt follow upon their deſtroying with one hand, what but now they had ſet up with the other, nor would they take away wth their left what they gave with their right; but Right, and Charter, and Liberty, and Property, ſhould be all of a ſort, and one mans claim of any thing from or by any of Them as good as anothers. Could they eſpy (that which is) an involved title in theſe publick evidences they contend for, and theſe Dues to be as certainly implied in the Charter (as they are) as their own inheritances; They would no doubt ſoon change their Engliſh mindes in a contrary way to the new-inſtructed (1) Iſlanders of *Melita*, ſettling for truth and no longer for errour, (*Father forgive them*, I doubt they have not yet *known what they doe*,) Hence ceaſing their clamour againſt their neighbours, as thoſe would have no wrong done to themſelves, and accounting it a moſt unreaſonable partiality, not to be owned by thoſe that are in any degree among the loweſt ſort of Honeſt men, to pick out that which is for their (2) turn in a publick evidence, and throw away the reſt, or make that they have got of power to diſanul it. Mr. Petitioner, whoſoever thou be, I name None, but

(1) Acts 28 6.

(2) *Theſe be thoſe excellent Laws contained in this great Charter, and digeſted into 38 Chapters, which tend to the honour of God, the ſafety of the Kings conſcience, the advancement of the Church, and amendment of the Kingdome, granted and allowed to All the ſubjects of the Realm* Co. Inſt. 2. pa. 1.

but mean All, and in love and friendlineſs beſpeak & petition Thee : *A. B. C. D. E. F. G. H.* or whoſoever thou be that loveſt the Charter, the Petition of Right, or Right it ſelf, hearken; And if thou be a Chriſtian and Engliſh man, be perſwaded hereafter to proceed upon more equall terms, and from a better information of judgement, ceaſe to pervert the right words of the Law; Whatever thou haſt done heretofore in the days of thine ignorance, now taking no other courſe but what is juſtifiable by the rules of common Honeſty. Could I but hear you once reſolve, that every man ſhould have *his Own*, and Law ſhould be the rule of that, your own choſen Inſtruments ſhould be the evidences, and not any juſt mans plea ſhut out of the Court, be it what, or of, or for whomſoever, I would not then doubt to have gained of your honeſty and ſimplicity a ſtrong patronage of that righteous cauſe now in ignorance and by miſtake ye go about to ſuppreſs, and that ye would appear valiant, yea ſuffering Champions for that equity and right, ye now ſeem reſolved to take pains, if not to ſuffer, rather then permit any longer thoſe that have right to enjoy. Let but a love to truth, and conſtancy to your own principles be with you, and I have enough, I petition, I ask no more. Nor do I altogether deſpair; As great changes have been in the world, and faces about from Weſt to Eaſt, quite contrary to what was once perſecuted or proſecuted in ignorance. The two Theeves ſhamed not to confeſs the truth at laſt: (I equall you not in injuſtice, or meaning wrong, but God grant you and I may equal them both in Turning from out our evil ways, paſſing from death to life, repenting our hidden ſins, and converting from darkneſs to light, from the power of Satan unto God.) *Martha* loved much after, who before had done that needed much forgiveneſs. *Matthew* the cheating Publican, turned upon admonition a Diſciple and Apoſtle; And is not *Saul* among the Prophets, *Paul* among the Preachers! Good men and true, Remember chiefly that laſt example: Wonder, but Believe it was even ſo; Inquiſitour *Saul* is turned a zealous Profeſſour, and he that was a buſie Perſecutor, now as active an Evangeliſt and Profeſſour: When Chriſt, who is the

the true light, ſhined to his ſoul with awfull beams, he fell down, and recanted, and repented his (1) zealous ignorance, and though he had received Commiſſion (*Acts* 9. 2.) from the higheſt then of Prieſts and Powers, yet God cauſed him to revoke all, and we have (2) *heard ſay*, (as the Jews of him truly,) that *He which once perſecuted in times paſt, now preacheth the faith which once he deſtroyed: for which, men glorified God in him.* Why ſhould the like be deſpaired of you? of whom I muſt go againſt mine own both hope and full perſwaſion, if I ſhould ſay otherwiſe then that I believe ye have profited thus far, That ye love the truth. Ye mean well, ye will, (why will you not?) be faſt men, and true to thoſe great names of *Juſtice*, *Equity*, and *Righteouſneſs*, as they ſhall be revealed to you, not to your own opinions, (frowardly perſiſted in) how plauſible or profitable ſoever, and as new and better light ſhall ſhine, not be in love with former darkneſs? Be perſwaded, ye may have erred: The Church has right, a Right of Tythes, a Civil Right, a Charter Right; and will you yet go againſt your own principles, and deny other men that right your ſelves think fit almoſt to reſolve to die for? Will ye not grant, what in your own caſes ye ask, and refuſe to give to others, what ye expect to receive your ſelves? ſhall they not have what ye will not be denyed? What Equity, Reaſon, or Conſcience were this? Be valiant, be wiſe, be juſt, and conſtant, I crave no more: Or, if ye ye will not, (*ſtriving to do to others, as you would your ſelves ſhould be done unto*,) How dwelleth the love or law of Chriſt in you! How can you expect that God, who is a God of Wiſdome, Juſtice and Truth, ſhould ever more ſhine with the leaſt ray of his favour upon any of your enterpriſes! This Apoſtrophe was needful: God lay it to your hearts. *Remember, there is a day appointed, when God ſhall judge the world by Jeſus Chriſt*; and then if you ſhould appear to have wronged his Meſſengers, deſpiſed his Prophets, or driven on any cloſe unjuſt deſign (with ſucceſs) of impoveriſhing and making a prey of their worldly weakneſs whom God hath intruſted with your ſouls; How would you anſwer this worſt of wrongs? What put up in excuſe of ſo aggravated injuries?

(1) *I verily Thought thu with my ſelf, that I Ought to do many things contrary to the Name of Jeſus of Nazareth, Which I alſo did at Hieruſalem, &c.* Acts 26 9

(2) Gal. 1 23.

ries? Or, what could you think to ſay to ſuch an imputation, Alledged by his juſtice, Inforced by your adverſary, Aſſured by the things, Recorded in his and your memories, Attended with the furies of another world for compleat revenge, and that of the worſt of crimes, hath the leaſt of excuſe, the moſt of ſhame, and (of all you can readily think of) the weakeſt and loweſt hopes of mercy? Eſpecially ſith now the light of truth hath ſhined into your ſouls by better information, at leaſt ſhined upon your ſouls by offer of its bright and piercing beams; ye *May have received* the truth, which *truth would ſet you free* (from errours;) Or if no more, yet it hath been laid before you, or you have been told but where it is, that ye may ſeek for it, which will render you far toward Without excuſe.

CHAP. XXII.

AND thus much of, for, and from the moſt known Head of all our Laws, the great Charter; whereof the more, becauſe it deſerves more: Proceeding, next whereto is a Conceſſion of about the end of *Hen.* 3. confirming the Juriſdiction, and by conſequent the things thereunder in a Parliament Ordinance called *Regia Prohibitio.* I firſt met with it in the (1) Ms. before mentioned, and ſet before the ſtatute *De Anno Biſſextili:* which being referred to 21 *Hen.* 3. I think may well be placed hereabouts: the (2) print has it of uncertain time, and (3) Sir *Edw. Cook* as about the beginning of *Edw.* 1. I believe it to be that with *Articuli Cleri, Circumſpectè agatis, &c.* referred to in the end of the ſtatute of 2 *Edw.* 1. 13. though others

(1) In Biblioth. Bodl. Oxon. S. 1. 8. Iur.
(2) Pulton pa. 109.
(3) Inſtit. 2 pa. 600.

(1) others point it to, *Probibitio formata ſuper Articulis Cleri:* Well, Howſoever: *Incipit Regia Probibitio. Sub qua forma impetrant layci Prohibitionem in genere ſuper decimis, oblationibus, obventionibus, Mortuariis, &c. Reſpondit Dominus Rex ad iſtos articulos, quod in decimis, oblationibus, obventionibus, &c. quando agitur ut prædictum eſt, prohibitioni non eſt locus.* None to be granted in caſe of Tythes, Oblations, Obventions, &c. and then is my drift ſecure: 'Tis known what would be the iſſue of other proceedings. Indeed it follows, If by ſale the things change nature, becoming temporal, or the quantity may juſtly occaſion an *Indicavit*, then, &c. But in the ordinary courſe, none.

(1) Ib. Pa. 663.

In (2) *Edw.* 1. time we have the noted Statute of *Circumſpectè agatis:* made, it ſeems, to reſtrain and keep within due banks ſome powers granted a little before to the ſecular Judges to curb in his Juriſdiction the Biſhop of *Norwich*: (whoſe (3) name yet might be but as *A.B.* an *Individuum vagum*, appliable to all who had their due liberty in danger of being fettered, and indeed to them (4) ſeverally it was directed:) **The King** (therein) **to his Judges ſendeth thus greeting. Deal circumſpectly in all matters concerning the Biſhop of** Norwich, **and his Clergie, not puniſhing them if they hold plea in Court-Chriſtian of ſuch things as be meerly ſpiritual; that is to wit, of penance, &c.** Item, **If a Parſon demand of his Pariſhioners oblations or tythes due and accuſtomed, or if any Parſon do ſue againſt another Parſon for tythes greater or ſmaller, ſo that the fourth part of the value of the Benefice be not demanded.** This is ſo plain, nothing can be more: though the ſecular Judge might ſend his hook to fetch cauſes to his Court in ſome doubtfull caſes, yet for things meerly ſpirituall, or for tythes by name, This Law ſayth, He may not. Which for better preſervation (5) *Lindewood* has alſo in the Churches behalf taken into his Provincials.

(2) 18 Edw. 1. Fulton pa. 70.

(3) *Put but for an example: The thing extendeth to all the Biſhops of the Realm* Co. Inſt. 2. pa. 487.

(4) Rex enim miſit certos Iuſticiarios ſuos ad procedendum ſub certa forma contra Epiſcopum Norwicenſem & alios de clero ſibi adhærentes, quibus poſtea Rex ſcripſit ut hic habetur Gloſſ. Norwicenſem Lyndewood. de foro compet. l. Circumſpectè.

(5) Ibid.

In the ſame *Edw.* 1. time was granted the Statute of Conſultation: It hath not, I confeſs, expreſs mention of tythes by name, but the Juriſdiction, (and that enough) allowed:

for it being granted, which cannot be denyed, from other assurances, both that tythes were due, and This would bring them in, in the grant hereof intire, is enough, the rest will follow. It seems some there were would then obtain a Prohibition to stop the wheels should properly move to Justice in this case, and when the business came to the Lay-Judge, go no farther: So the Plaintiffe (was delayed, yea, denyed right, and almost wrong, for he could have no sentence any way, for remedy whereof, it was ordered: That (1) **Whereas Ecclesiastical Judges had often surceased, &c by vertue of Prohibition, whereupon nothing done in either Court, Our Lord the King willeth and commandeth, that where so, the Chancellour or Chief Justice upon sight of the Libel upon instance of the Plaintiffe** (if they can see that the case cannot be redressed by any Writ out of the Chancery, but that the Spiritual Court ought to determine the matters) **shall write to the Ecclesiastical Judges before whom the cause was first moved, that they proceed therein, notwithstanding the Kings Prohibition.** Plain, that in some cases (2) the other Courts could afford no Justice, and therefore of necessity must be a remission hither; so appropriate was the remedy and indeed cognizance and rule of Justice to this Court, that all the rest could not so much as hear; and that righteousness might not fail from the Earth, hither loyall subjects must onely come for it. To some time of the same Kings Reign is yet farther ascribed (3) this grant, that, (Where (4) **No Tallage or aid shall be levied without consent of Parliament, Nor** (5) **any thing purvayed to the Kings use without the owners consent**; There) **We will and grant for us and our heirs, that all Clerks and Laymen of our Realm shall have their Laws, Liberties, and free Customes as largely and wholly as they have used to have the same at any time when they had them best. And if any Statutes have been made by us or our Ancestors, or any Customes brought in contrary to them, or any manner Article contained in this present Charter, We will and grant that such manner of Statutes and Customs shal be void and frustrate for evermore.** With (6) order to have it read every year twice.

(1) 25 Edw. 1. Anno Dom 1296 id. pa. 75.

(2) *And this is the very reason why the 32 Chap. of 32 Hen. 8. was made law, because Lay men that had use of all other Courts, yet could not come at their due tythes now settled upon them by any of those Courts, which made it necessary they should be inabled, to sue in the Court Christian, where onely those dues were tryed, and that was the thing there done, and the new indulgence there granted Town, as appeareth by the Preface.*

(3) Pulton, pa. 90.

(4) Ib cap. 1.

(5) Ib. ca. 2.

(6) Ib. ca. ult.

twice in every Cathedrall, and a curſe upon the breakers. I infer: If, 1. All Laws, Liberties, and Cuſtomes were here granted. 2. To Clerks as well as Lay-men. 3. Of the largeſt ſize or uſe. 4. In deſpite of any Law to the contrary; Then, 1. here be tythes, which were then due by Law: 2. the Juriſdiction of them, a Liberty, which would bring them in; 3. And ſo they were both due and muſt be paid, (taking in conſideration of the Then ſtate of things,) by vertue of the Law, and by vertue of this Law, for that herein were granted all Laws and Liberties. Remove to *Edw.* 2. and there we finde thoſe are ſtyled (1) *Articuli Cleri*, and ſo not like to afford nothing; but Engliſhed, Articles (2) for the Clergy, and ſo like to afford ſomething for them. The firſt thus propoſes and reſolves: **Whereas Lay-men doe purchaſe Prohibitions generally upon tythes obventions, oblations, mortuaries, &c. The King doth anſwer, that in tythes, oblations, obventions and mortuaries** when they are propounded under theſe names) **the Kings Prohibition ſhal hold no place, although for the long withholding the ſame, the monie may be eſtéemed at a ſum certain. But if a Clerk ſell his tythes gathered into his barn for monie, &c.** then otherwiſe. And if the Kings Prohibition ſhould not lay any impediment, but things muſt be tried by the Canons, we know and are aſſured whether tended, and what that meant. But more particularly here obſerve, 1. That the power which is known would give them in, is here, without diſlike mentioned. 2. Plainly allowed. 3. As to tythes by name. 4. Strengthened; By this that as in *Circumſpectè agatis* no diſturbance ſhould be offered by the ſecular Judge impeading to proceed in their own way. 5. And all this by Parliament, Sending the trial where beforehand it was known how the buſineſs would go; And then, as if the ſupream power ſend a criminall offendor to the Bar of Criminals, knowing how the caſe will there go, looking on, permitting, and acquieſcing in the ſentence there to follow upon that ſending; They more then ſeem to confirm and allow, whatever prove the iſſue; ſuch interpretation may reaſonably be made here of the remiſſion of theſe caſes, and the temporal power could not but be thought

(1) 9 Edw. 2. id. pa 98.
(2) *In the old edition of* 1543.

thought to own the event, and what was done whether themselves sent for trial. The provisions were as strict as well they could to hinder extravagancy, for, as treading in the steps of the *Regia Prohibitio* before, if once the thing were never so little converted to seem temporal, Away with it presently, Grant it no longer protection here, but allow suit for it wheresoever; But if it remained, *spirituale vel spirituali annexum*, it self, As reason would and the nature of the thing required; the King says, the Law says, the Parliament says, and all, let the Church have her due; If it be to try these things and bring them home to her own house, let no envious incroachment grudge her right, no not though by continuance of time the things have run so long, as they may seem to have degenerated into a Lay-commodity. *Chap.* 2. **Also if debate arise upon the right of Patronage, and the Quantitie of the tythes do come unto the fourth part of the goods of the Church, the Kings Prohibition shall hold place, if that cause come before a Judge Spiritual:** Insinuating, (and the practise hath been accordingly) that if less then a fourth part, (or the Patron of both the same, for so it was,) it must be tried as before. And so *chap.* 5. where no Prohibition is to be had (as in the title) if tythe be demanded of a new Mill; And the text: **Also if any do erect in his ground a mill of new, and, after the Parson of the same place demandeth tythe for the same, the Kings Prohibition doth issue,** &c. the Answer: **In such case the Kings Writ of Prohibition was never yet granted by the Kings consent, nor never shall, which hath decreed that it shall not hereafter lie in such cases.** And then let the Parson alone: His strength is, those Canons will do execution enough; *De proventibus autẽ Molendinorũ volumus quod decimæ fideliter & integre solvantur*, had (1) *Rob. Winchelsee* said before, then in

(1) Constit. provincial. tit. de decimis cap. Quon â propter. *Also*, Decimæ &c. Molend no um, Venationum, Negotiationum, &c. tit. eod cap. Sancta Ecclesia. De prato, de aquis. & molendinis L. Edovardi Confess' cap. 8. *cited before.* De molendinis, & piscariis, & somis. Constit ut. cujusdam Episcopi, *about* Hen. 3. *time, alledged by M.* Selden, pa. 231. De proventibus Molendinorum, piscariarum, fœno, &c. Decret. Gregor. tit. de decimis ea pervenit. *Of those forced by windes as well as water.* Mandamus quatenus. H. Militem, ad solutionem decimarum de his quæ de molendino ad ventum proveniunt, sine diminutione aliqua compellatis, tit eod cap. 23. Ex transmissi. *And, as of Merchandise or prædial, without diminution of expence.* tit eod. cap. 28 Pastoralis officii.

force.

force. *Integrè*, that is without diminution, the tenth diſh, not the tenth penny, ſaith (1) *Lindewood*: And *memorand.* theſe (*Articuli Cleri*) and *Circumſpectè agatis*, and ſome other had a clauſe to keep them inviolable by the late Parliament determination of 2 *Edw* 6.13. in the end.

(1) Sc. ſine diminutione, ſic ut ſolvatur decima proventuum veré ſicut proventus accidunt, &c. decima mentata quorumcunque granorum molitorum ad commodum domini molendini vel molendinarii pertinentium; & ſic non ſufficit ſolvere decimam prout Molendinum tranſit ad firmam, quoniam in firma de veriſimili non eſt verus valor, cum firmarius ultra firmam aliquid ſperet lucrari. Gloſſ. Integrè. cap. Quoniam propter.

Follows next *Edw.*3. and here we have more: In every K. Raign almoſt ſomewhat, if but for recognition, and to ſhew that that peece agreed with the whole. As firſt, There had been over-lookers, as before, of the Juriſdiction Chriſtian, who diſturbed, and diſcouraged, (but they did but over-look and hinder, not abſolutely take away; the thing remained, and hence proved.) Alſo ſome that pulled away a branch or bough rather from the tree, hindering by *Scire facias* from the Chancery the triall of Diſmes from its proper Court: The King in the Statute for the Clergy before mentioned, gives remedy for both in the two laſt Chapters of that Act. Chap. 6. *Item*, **Whereas Commiſſions be newly made to divers Juſtices, that they ſhall make inquiry upon Judges of holy Church**, &c. But the whole was tranſcribed before, whereto I therefore remit. Mark chiefly that clauſe, that **Cauſes teſtamentarie and others, did notoriouſlie belong to the Cognizance of Holy Church**, and the King ſaid ſo. Not *Rob. Winchelſee*, or *Jo. Stratforth*, or any of the paſt or then preſent Church-Miniſters, who did no more then they had power; but the King: Nor did they incroach, ſaith He; It was rather Then an incroachment upon them to interpoſe and trouble the orderly motion of their wheels tending to a juſt adminiſtration of things and giving every man his due in a way allowed by all the power that then was above, and publick. Chap. 7. *Item*, **Whereas Writs of** *Scire facias* **have been granted to warn Prelates, religious, and other Clerks to anſwer Diſmes in our Chancery, and to ſhew, if they have any thing, or can any thing ſay, wherefore** ſuch

18 Edw. 3.

such Dismes ought not to be restored to the said Demandants, and to answer as well to us as to the parties of such Dismes: that such Writs from henceforth be not granted, and that the parties be dismissed from the secular Judges of such manner of pleas. Saving to us our right, such as we & our ancestors have had and were wont to have of reason. God forbid else, and that whether Supream or Temporal power should be abridged of its due by any dependant or inferiour: for the Charet never moves so well as when every wheel keeps its proper place, and every power does its own work without any others troublesome let or interposition. A wen in the body, or any monstrous excrescence (besides that it deforms the whole) robs the other parts, and none is so much pleasured with what is superabundant, as the rest is displeasured by following necessary defect: The injury of any member redounds to the prejudice of the whole body; And the Common-wealth flourisheth so prosperously never, as when every limbe acts for it selfe, every member does its own office, the head, foot, hand, eye or other part commanding, obeying, ruling, or being ruled as it ought, and none usurps or launcheth out over-busily into that of cure which belongs in proper design to another. Here it was meant so: and therefore, *Saving to the whether Supream or Temporal power, what did belong thereto*, the appearance upon the *Scire facias* is discharged. Can any thing be more plain? And if such inquiries had been used to be made in the Court of Religion, (as this Statute implies) Then, and must be there, and were here sent thither by the Parliament, And They when things came thither, said the tenth sheaf, fleece, colt, or lamb was due. Can any thing be more certain then that it was so done even by their *recognition*, assent, and purposed appointment, and ought accordingly to be paid? Whosoever did, had an unequall task to struggle against, the mighty Law, and Soveraign power that made Right, if he would go on yet waywardly to contend. The Law is, as (1) Gods Word saith of an Oath) *the end of all strife*; sith then It said so, and in other matters it uses to make an end, being the bottome of Right, the highest appeal, and uttermost any other

(1) Heb. 6. 16.

ther men had to ſay for any thing, how vain muſt they be, who would contend, that were thus concluded before they began, and all-ruling oracles of Law rightly ſought, and duly applyed, and diſcreetly drawn forth, had determined of before, The tenth was due, and muſt be parted with?

About three years before, in this Kings Raign there was a repealed Seſſion, part whereof is made to look this way: The words are theſe. *Item*, **It is accorded that the Miniſters of holy Church for monie taken for redemption of corporal penance, nor for proof and account of Teſtaments, or for travail taken about the ſame, nor for ſolemnitie of marriage, nor for other things touching the Juriſdiction of holy Church, ſhall not be impeached or arreſted, nor driven to anſwer before the Kings Juſtices, nor other Miniſters, but have Writs from the Chancery for diſcharge, &c.** which I finde conſtrued in favour of tythes: But becauſe it was repealed ſoon after, and doubtful when it was in being, the ſeveral poſſible ſenſes of the words leading the grantors minde to look (not improbably on either part) two ways; I paſs it over, and come to the Statute of *Sylva cædua*, which was ſure to the purpoſe, at leaſt by conſequent. It was made indeed againſt (1) ſome exactions of tythes, yet ſo as it implies for other; The by-blow ſets up to rights what the direct had pulled down, and By ſaying Some ſhould not be paid, The reſt it ſhould ſeem Should; For a Prohibition allowed to take place for trees of twenty years growth, and no more, ſeems to whiſper and ſuggeſt that in others it ſhall not, or the reſt is left to courſe of ordinary proceeding. The words were given (2) before, not needful to be repeated again, and the moſt of practiſe and the regulation of things has been, I beleeve accordingly. Laws are commonly like two-edged ſwords, they cut both ways: If they ſay *This*, they mean *That*; If they give the Negative, they imply the Affirmative; If one in prohibition, the other to permiſſion; If they ſay, a thing ſhall be hindered, and ſo far, they imply farther hindering is not meant, but the thing as to the reſt is left at liberty. Foraſmuch then as the Canon gave tythe of all (growing and renewing) and the Statute, finding fault with ſome

15 Edw. 3. cap. 6.

By Sir Tho. Ri'ſley: *in his view of the Laws*, par 3. c. 2. ſect. 1 pa. 143.

(1) 45 Edw. 3. c 5

(2) Pa. 137.

of the latitude, gave order to prohibit but of twenty years growth; the reſtraint of this ſize is implication that liberty is left to the reſt, and the hindering *but ſo far* that in the reſt was ſcope; Which being for the tenth Faggot, Heap, or Cord, the Juriſdiction thereof, yea the Law thereof, and thereby Right is not a little hereby, nor obſcurely furthered and ratified. Or otherwiſe obſerve, as before, two things: Firſt, *Lex terræ* did here interpoſe, and when any thing paſſed the Synod, the State could not brook, This 's power controuled That 's Canons, which hindred the Right of Tythes effectuall from going any farther then the Crown Law would allow. Secondly, but in that which was *Sylva cædua* properly, or Copp'ce-wood, this interpoſition was not, but the other power left at liberty (known to reſolve as before) Therefore there was ſtill a connivence, and ſo far conſent and approbation, and ſo this Law was firſt *againſt Tythes*, is ſecondly *for them*; at firſt hand *againſt Some*, at ſecond *for Others*, And affording but a prohibition for twenty years growth, leaves, yea wils, (upon the matter) the reſt, and leſs to be paid.

(1) 50 Edw. 3. 4.

Touching which Prohibitions one thing more is in this (1) Kings Raign (from the Statute too, for ſtill that is to me moſt authentique, and as a publick Act, more ſafe ground of opinions then any private thinkings, which I would make uſe of onely in defect of thoſe) and it is againſt multiplying Prohibitions upon Prohibitions: Corrupt practiſe may after have prevailed, and by degrees it have been brought in, that a (2) ſucceſſion to five or ſixe generations hath followed, the Libel remaining the ſame, but by a Law then it ſhould not have been ſo, but one be all, and all but one: **after that and conſultation releaſing, the Eccleſiaſtical Judge was allowed to proceed notwithſtanding any other.** And this ſhews both there was need of a Prohibition to hinder, the Court might proceed without a Prohibition: And that a Prohibition ſhould not prohibit after a Conſultation, all to the ſtrengthening of this juriſdiction, (which ſtill ſtrengthens this right and title:) and hitherward alſo tend many things in that ſtatute as 'tis called, For the Clergy, *Anno* 25 *Edw.* 3. *Richard*

(2) *So averred and complained in the articles exhibited to the Privy Councel*, 3 Iacobi, in Mich. Ter. Obj. 5 Cook Inſtit 4 p. 603.

Richard 2. was the next that sate in the Throne, whence at the instance and speciall request of the Commons he published sundry things in amendment and relief of the Realm, and among them two in relief of the still oppressed as then thought and disturbed Ecclesiasticall Jurisdiction. (1) **The Prelates and Clergie of the Realme do greatly complain them of that Disturbance, in matter of Tithes, against the Franchise,** &c. But the words hereof were given (2) before, there needs onely now to remember thence: 1. That Triall of the Rights of Tithes is there said to belong to the Church Court. 2. It was then so. 3. It (3) had been so. 4. Of Right it Ought to be so. 5. To disturb was against the Franchise (allowed and ratified by the Charter) All which things are there plainly in a Parliament law acknowledged. It was no new Incroachment, but an allowed usage; It was no new Custome then sprung up, but παρὸ παράδοτον delivered from hand to hand through many Generations: It was not a sensless Custome, getting head, *tantùm non* against reason andequity at first, but the sage and advised Law had thus at beginning stated, and till now declared and appointed: And maliciously and Unduly, 'tis said, (to note the Fountain whence that grave Assemblie thought those bitter Streams proceeding Malice and Wrong) men were indited for doing their then duty, as **of Right they ought to do, and of old were wont to do**: but to proceed; in the next Chapter is more.

(1) 1 R. 2. c. 13.

(2) Pag. 151.

(3) *How long? Sir* Edward Cook *looks back to some then late Acts of State, as* 18 Ed. 3. cap. 7. Articuli Cleri. 9 Ed. 2. circumspectè agatis. in 13 of Ed. 1. &c. *But the farthest of these was but within the compass of a Century toward the end of this young Kings great Grandfathers dayes, and so far unlikely and unfit then to take the stile & date upon them from the gravity of a Parliament, to have it said, Of old were wont to be: It was then scarce out of many mens memories, and if it had been within ken of any such apprehension, the plain intention of those sages would no doubt have measured out their words by things, and set it upon its right bottom of something within view, which some of them had seen: to omit what shall be after said in fuller answer and plainer proof that in* Hen 3. *time, (and then likely by use and custome too) this discussion of Dues was made and acted here upon this Scene.*

Item, **It is accorded that at what time that any Person of holy Church be drawn in Plea in the Secular Court for his own Tithes taken by the name of Goods taken away, and he which is so drawn in Plea maketh an Exception, or alleadgeth that the substance and sute of the Businesse is onely upon Tithes, due of Right and of Possession to his Church, or to another his Benefice: that in such case the general Averment shall not be taken without shewing specially how the same was his Lay Cattall.** Here was

1. Somewhat distinct from Lay Cattal, and to oppose thereto. 2. Tithes due of Right, and that by Statute-testimony. 3. Something to be done before the Secular Court can take notice when the subject is Tythes: 4. The scope of all to hinder that Court. For if the Land-owner might suppose them Lay; then as it was an offence for the Church-man to take them, so that offence must be examined in the proper Lay Consistory: but if they were *Tythes taken away*, (the Churchmans due Own) then elsewhere, (where it was known what would be said) and That seems forbidden, This furthered. The Goods must not be supposed Lay Cattall, They might be proved the Takers own Tythes, which must be done onely 'tis known where; And so the whole doubt of the Lists where the Controversie was to be tried, (which was the thing in question) vanisheth. This I take to be the meaning, the words being dark, and observe all along that *Lindwods* Collection seems referred to as Text, and even the Secular Law relates still to those Rules (as approving) to try by them, whether this or That shall be taken for Tythes or not? So that interpretatively the very Canon (by approbation and allowance from abroad) is the Rule of some Civil Right immediate with us, and the Giver of some Title of Dominion, the Church by intimation and supposition of the Parliaments Civil Law.

Immediatly the next was *Henry* 4. of *Lancaster*, whose fatherly care continued to keep together these Dues to the maintenance of Religion; and whereas some of the Order of *Cisteaux* had procured Bulls for the discharge not onely of the Land they used, (which was (1) allowed and a singular Exemption) but of what they (2) farmed out, which would not be allowed in manifest dis-agreement from the rest, against this it was ordered. (3) **For as much as our Lord the King upon grievous Complaint made to him this Parliament, hath perceived that the Religious men of the Order of Cisteaux in the Realm of England, have purchased certain Bulls, to be quit and discharged to pay the Tithes of their Lands, Tenements, and Possessions let to ferm or manured,**

(1) Decr Greg. tit. de decimis. cap. 10. ex parte tua.

(2) Licet de benignitate sedis Apostolicæ sit vobis indultum, ut de laboribus, quos propriis manibus vel sumptibus colitis, nemini decimas solvere teneamini: propter hoc tamen non est licitum vobis, decimas de terris vestris subtrahere, quas aliis tradi litis excolendas. id. cap. sequ. (3) 2 H. 4. cap 4.

red, or occupied by other persons, then by themselves, (for such discharge must be, or else all paid;) In great prejudice and derogation of the Libertie of holy Church, and of many Liege people of the Realm: our Lord the King willing thereunto to ordain Remedie, by the advice and assent of the Lords Spiritual and Temporal, and at the instance and request of the said Commons hath ordained and stablished, that the Religious Persons of the Order of Cisteaux shall stand in the state that they were before the time of such Bulls purchased: And that as well they of the said Order, as all other Religious and Seculars, of what estate and condition that they be, which do put the said Bulls in execution, or from henceforth do purchase other such Bulls of new, or by colour of the same Bulls purchased or to be purchased, do take advantage in any manner, That Processe shall be made against them, and every of them by garnishment of two moneths by Writ of Præmunire facias. And if they make default or be attainted, then they shall incur the pains and forfeitures conteined in the Statute of Provisors, made in the 13 *Richard* 2. Done in the Parliament at *Westminster*, in the *Utas* of *S. Hillary*; and we have by it a notable evidence of the King and Kingdoms good will and allowance of the continuance of these Rights, that they would not suffer them to be curtolled or kept back unpaid, not by virtue of an Order from *Rome*, (whose power how great it then was, all know) but willed rather a *Præmunire* against the Detainers, Perverters, and their Adherents and Assisters: The rest did, so should they set out their Dues, as of Right and accustomed; A strong evidence they were due indeed, when the State would not suffer them unpaid! Now not onely these but some others, it seems were wavering or shifting: The Fermours of Aliens gave within few years after occasion to this Vote. Item, (r) It is ordained and established that the Fermours and all manner Occupiers of the Mannours, Lands, Tenements, and others Possessions of Aliens, shall pay, and be bound to pay all manner of Dismes. (It seems others did, for this was no positive single Imposition upon them, but onely an Exemption from that they would have been exempted from)

(r) 5 Hen. 4. cap. 11.

thereof due, (they were then no voluntary Benevolences, but discharge of Duty, and Due upon Command, though more acceptable if their readiness made them free-will-offerings,) **To Parsons and Vicars of holy Church in whose Parishes the same Mannours, Lands, Tenements, and Possessions be** (according to the manner then used and custom established for parochial discharge) **so assessed and Due.** Again, **as the law of holy Church requireth** (That the bottom, in need of all, looked upon by the State, and here required to have obedience; and in others by the same reason; for why should we think These had any speciall Obligation to a Rule by themselves from the universal, which did rule all?) **Notwithstanding that the said Mannours, Lands, Tenements, or other Possessions, be seised into the Kings hands, or notwithstanding any prohibition made or to be made, to the contrary.** And yet notwithstanding all this too, that backwardness and evasion of the *Cistertian* crept further, which made it needfull to binde up all by an universal Decree within few years after, The grievance and remedy are there both thus proposed together. Item, **It** (1) **is ordeined that no person Religious or Secular,** (which is large enough) **of what estate or condition that he be, by colour of any Bulls conteining such Privileges,** (There must be Priviledges, and if Bulls from *Rome* could not afford them, What as then could? The common condition of things is known;) **to be discharged of Dismes pertaining to Parish Churches,** (Payment and Parochial Again,) **Prebends, Hospitals, or Vicarages purchased before** 1 Rich. 2. **or sithence not executed, shall put in execution any such Bulls so purchased, or any such Bulls to be purchased in time to come: And if any such Religious or Secular person, of what estate or condition he be, from henceforth by colour of such Bulls, do trouble any person of holy Church, Prebendaries, Wardens of Hospitals, or Vicars, so that they cannot take or enjoy the Tithes Due or pertaining to them of their said Benefices,** Then to incur like pain at the *Cistertian* before. Thus to and in the time of *Hen.*4. whither the proceedings shew all along the good will of the State (whose Acts these have been) in favour of these

(1) 7 Hen 4. cap. 6.

these Dues; looking on and not hindering, but as was occasion and fit, furthering the due execution of their neighbouring Courts Laws, ever and anon renewing the pledges of their love and testimonies of their good will, that the wheels might keep moving that brought in Tithes from every Possessour, and now it was as clear all abroad and evident to us they did so, as that men possessed any thing. Henceforth therefore particular Laws were not multiplied, (as they needed not,) aiming purposely and directly at the settling or recovery of them, but those that were, were left to due execution, and that enough. The fruit doubtless (by the Churches Authority as before directly used to call for them, and the Secular Powers assistance thus to bring them in,) such an universall Payment (save where *Achan* would hide his Golden Wedge from the holy use it had been designed for, or (1) *Ananias* and his Wife νοσφίσασθαι, clip the Shekel appointed for the Sanctuary, I mean, coveteous or profane men did by evident injustice hold back known Dues, against the Law,) that it needed and had a peculiar Exemption, whosoever now paid not. I need not be exempted from a Nineth or Eleventh, because none due to be required: I want no special Priviledge to be free from contributing to a Paschal Lamb, or my Shekel for *Jerusalem* yearly, or the old *Peter*-pence, because none such now exacted among us; but to be free from this Tribute to the maintenance of Christian Religion, an Exemption was needed, which proves the *Suppositum* strongly, even as an Exception supposes an allowance of things otherwise by the general Rule, and an Exoneration or Discharge from an Impost or Quit-rent to have been paid, allows that it was due.

(1) Καὶ ἐνοσφίσατο ἀπὸ τῆς τιμῆς. Acts 5.2. *Slips off somewhat from it. When our Tithes might have probably seemed our own, we had colour of liberty to use them as we saw good: But having made them His whose they are, let us be warned by other mens example what it is* νοσφίσασθαι, *to waste or clip that Coyn which hath on it the mark of God. Hooker Polit. lib. 5. Sect. 79. pag. 419.*

Three (2) sorts were indeed so exempted, (and it was need so, else they must have paid) 1. The *Templars*, till they were (3) taken off in *Ed.* 2. time, and their Indowments settled on the Knights of *Jerusalem*. 2. Those *Knights* themselves keeping their own, and

(2) *See a little before; but remember, that this Exemption was not then so much granted to those Orders, as a general Exemption granted before to all Orders restrained then to those.*

(3) Vid. Stat. de terris Templariorum in 17 Ed. 2. p. 111. *of* Pultons *Abridgement*.

suc-

ſucceeding to what as but now. And thirdly, the *Ciſtertians*, (of which alſo before,) all by the Decree of the Laterane Councel; and with them ſome others alſo: As *All the Orders* (1) *for their own new broke Grounds, their paſture ground for their Cattle, and their Garden fruits*; *ſome* (2) *for all their demains* by particular Charter from *Rome*; or by preſcription, (of lands in the poſſeſſion of Clerks;) or by Grant, or by Compoſition, or by Cuſtome: but theſe ſtill, and the more they were, do all ſo much the more confirm the general uſage, from which that men might be free they needed this Exemption. And this ſo well ſettled and quietly ſubmitted to, that till the lowd and boiſterous ſtormes in *Hen.* 8. time, when all was ſhaken, I meet not with here any diſturbance, or any publick order, that (it ſeems) needed or had occaſion to call for any new obedience. The Canons, laſt as they had been, placed as they were, and aſſiſted (which was never wanting) with the whole force of the Temporal Power, kept all in awe, nor were Tythes but *brought into the Store-houſe All*, in the Prophets phraſe to have better uſe made of them than I doubt commonly was. For 'tis the charitable intention of man, the wiſe proviſion of the Law, by the bleſſed providence of God that ſets things often in a good way to honeſt or holy ends, but the corruption of man hinders; ſeldom does one half come to good, or are the things not to abuſe enough perverted, how well or piouſly ſoever levelled and intended.

(1) Cæteris verò ut de novalibus ſuis quæ propriis manibus vel ſumptibus excolunt, & de nutrimentis animalium ſuorum, & de hortis ſuis decimas non perſolvant. Alexand. 3. in Decret. lib. 3. tit. 30. cap. 10.

(2) *Whereof ſee a very learned Diſcovery in Mr.* Selden *of Tythes.* cap. 13. ſect. 2.

CHAP.

CHAP. XXIII.

THus for ſixe ſucceſſive Princes Raigns: Under *Hen.*5. *Hen.*6 *Edw.* 4. *Edw.*5. *Rich.*3. and the wiſe puiſſant *Hen.*7. nothing being heard of murmure and diſcontent, but all in peace and ſilence. The Canons as in *Lindewood*, &c. governed the Conſiſtory: *Weſtminſter* ſent to controul as often as any noiſe was made of extravagancy, by Prohibition: Some prudent Statutes, as *Circumſpectè Agatis*, *Articuli Cleri*, *&c.* had bound their hands too, that they might not ſend as oft as they would, but when *abuſe called for remedy*; And ſo things went on in Harmony for juſtice, peace, and order through this intervall: Laws already made were obeyed, and more were not made, becauſe thoſe that were, were both for their end ſufficient, and ſet in a way to have *ſure* execution.

But now in that general Earthquake when this Earth was moved, and all the Inhabitants thereof, though ſome Men ſtood, and ſome Parts were not overthrown, When the turbulent paſſions of that mighty and boiſterous Prince left nothing untouched or unſhaken, and that ſome might ſeem at leaſt to ſtand the faſter, other parts were thought fit to be quite pulled down; yea, buried and intombed under the ruines of their own glory, as 'twere by the fatality of *Jerichoes* curſe, *Never more to be reedified*, *Maledictus vir ille coram Jehova, qui ſurget ut ædificet, &c.* yet even Then was no preju dice offered nor diminution made of this part of Eccleſiaſtical Revenue, or Juriſdiction to bring it in, (a great argument of its ſtrength that had over-lived a ſtorm, and ſome neceſſity that it was preſerved when that next was choſen to be caſt away;) But before this great work was done by himſelf and his ſon, divers new ſinews of ſtrength added to confirm all that had paſſed before, as well by clearing the right Ioſh.6 26.

had been by (1) ſome new Statutes to evidence the juſtice of the claim, as by creating a new power to fetch them in, and inabling (ſecular perſons at leaſt) to ſue for them in their own Court, the new Statute way: Not abrogating the Eccleſiaſtical, but giving choice of this; Pointing to a new remedy beſides the old, (as (2) commonly underſtood, though ſome doubt (3) rationally,) But for certain not deſtroying That utterly: For the (4) often mention of it upon other occaſions as well as this, with a clauſe of Proviſo (5) inſerted to fence all from violation, ſhews plainly that K. *Henry* meant what he did, and none ſhould or could croſs his purpoſe, *ſc.* though the Pope went off to keep the Church-power up, and though the Abbies went down, yet Tythes for the ſupport of Religion Muſt Not be medled with. Such power I mean as might begin and end its motion wholly within it ſelf, like the wheels of a watch that keep themſelves going by help of a Spring at home, needing no power from abroad, not of a clock whoſe moving weights are without, and ſo liable to the inconvenience of forain diſturbance: or as the higheſt ſphere of all, *Primus Motor*, that keeps it ſelf a going by it ſelf meerly, not like the inferiour that wait

(1) 27 Hen. 8. 20. 32 Hen. 12. 2 Edw 6. 13.

(2) *So is interpreted and uſed, and of force that of* 2 Edw 6. 13.

(3) *That the clauſe of treble damages in* 2 Edw. 6 13. *is to be uſed in the Eccleſiaſtical Court onely: See* Dr. Ridleys *view of the Laws,* par. 3. chap. 2. ſect 5. *That Cuſtomes in payment of tythes are tryable onely in the Eccleſiaſtical Courts, was averred to be proved before by him,* Sect. 3 *and ſee hereof the Proviſo tranſcribed below.*

(4) And that for ſubtraction of any of the ſaid tythes, offerings, or other duties, the Parſon, Vicar, Curate, or other party in that behalf grieved may by due proceſſe of the Kings Eccleſiaſtical Laws of the Church of England convent the perſon or perſons ſo offending before his Ordinary or other competent Judge of this Realm, having authority to hear and determine the right of Tythes, and alſo to compel the ſame perſon or perſons offending to doe and yeeld their ſaid duties in this behalf. 27 Hen 8 12.

And in caſe any perſon or perſons of his or their ungodly & perverſe will and mind, ſhall detain or withhold any of the ſaid tythes or offerings, or part or parcel thereof, then the perſon or party being Eccleſiaſtical or Lay perſon, having cauſe to demand, or have the ſaid tythes or offerings, being thereby wronged or grieved, ſhall and may convent the perſon or perſons ſo offending, before the Ordinary, his Commiſſary or other competent Miniſter, or lawfull Judge of the place where ſuch wrong ſhall be done, according to the Eccleſiaſtical Laws. And in every ſuch caſe of matter or ſuit, the ſame Ordinary, Commiſſary, or other competent Miniſter or lawfull Judge, ſhall and may by vertue of this Act proceed to the examination, hearing, and determination of every ſuch cauſe or matter ordinarily or ſummarily, according to the courſe and proceſſe of the ſaid Eccleſiaſticall Laws, and thereupon may give ſentence accordingly. 32 Hen. 8. 7.

(5) And be it enacted by the Authority aforeſaid, that if any perſon do ſubtract or withdraw any manner of tythes, obventions, profits, &c. that then the party ſo ſubtracting and withdrawing the ſame, may or ſhall be condented in the Kings Eccleſiaſticall Court by the party from whom, &c. to the intent the Kings Judge Eccleſiaſticall, ſhall and may, then and there hear & determine the ſame according to the Kings Eccleſiaſtical Laws. And that it ſhall not be lawfull unto the Parſon, Vicar, &c. to convent or ſue ſuch withholder of tythes, obventions, or other duties aforeſaid before any other Judge then Eccleſiaſtical. 2 Edw. 13.

on

on ſuperiour influences; Such power, and the Juriſdiction of Tythes therewith and thereby, and the right of Tythes by conſequent, yea, in Statute words expreſſed, not needing any derivation, He kept up in vigour, life, ſtrength, and quickneſs, as it was of uſe; And as well the Records preſerved as other means of information obvious enough do aſſure, that to his time, through his time, in it, and on this ſide the Law continued, which ſettles all, to ſettle theſe, and leave them ſettled, an indefeaſible inheritance to us their unworthy poſterity: And as they were left, ſo I hope for Gods glory, and the maintenance of his ſervice and ſervants, (the labourers that bring in His Harveſt) they ſhall not but always continue to all ſucceeding generations. For, *Who hath deſpiſed the day of ſmall things?* ſays the Lord in the (1) Prophet: Or, who can deny but ſmall things may be of great uſe and conſideration in the greateſt, ſith by Divine appointment *Badgers skin and Goats hair* (2) were offered acceptably to the building of a holy Tabernacle, whereby, was intended the great God of All ſhould be honoured and ſanctified? That Lord (*Dominus* (3) *cujus eſt terra & plenitudo ejus*) who (4) deſpiſed not a convoy of the meaneſt and ſimpleſt of beaſts for his perſon on earth, ſeems Still to Need the vile things of this lower world to ſet forth his glory in this vile and lower world, and if any one ſay ought to the contrary, or in froward oppoſition, ſay ſtill, as then, the Lord not onely uſeth, but *hath need of them:* His ſervants, though His, *live yet by bread*, if men, *as well as by every word that proceedeth out of His mouth*, their Lord and God. And ſith, Though *Jehovah* could not be pulled out of Heaven by extinguiſhing any of thoſe Lamps that burned to his honour in the Temple of the Lord at *Ieruſalem*, yet his wiſe old ſervants knew that unleſs their care, coſt, and love did procure profane oile from *Syria* and *Arabia*, Thoſe Lampes (with his honour) would go out on Earth, which made them contrive, purpoſe, and do accordingly; Even ſo, ſith the nature of things is ſtill the ſame, unleſs there be left ſuch loving and diſcreet followers of his now, by whoſe vigilance, induſtry and care, ſome conſtant ſupply may be apportioned,

(1) Zach. 4. 1.
(2) Exod. 25 4, 5.
(3) Pſal. 24. 1.
(4) Matth. 21. 3.

and issued forth for the maintenance of the outward part of his honour and support of his Gospel, and those servants of his that do his pleasure in holding it forth (Λειτουργοὶ εἰς αὐτὸ τοῦτο προσκαρτεροῦντες, *Ministers that attend this very Thing*,) It is not without the compass of manly and Christian fear to be jealous, lest the light and brightness of the glorious Gospel of Jesus Christ, (now shining in the faces of all men, though not reaching to their hearts, it is much to be doubted, much less returning fruit in their answering upright lives,) should (which God forbid!) be extinguished upon Earth by our negligence and parcimony, though his Deity we trust shine now in Heaven, and shall, and ever, above the brightness of the Sun, and beyond all Eternity. Wee hold God to be the end of the soul, Truth the way leading to it and Him; The Church the pillar and ground of truth, to hold it out in view to the world, (this we are sure of, 1 Tim 3.16. στύλος καὶ ἑδραίωμα τῆς ἀληθείας, the Apostle tels it us,) and the publick Ministers are the Churches servants: If then these servants shall do that work in holding forth this truth to guide to that end, They (being Men) must not have their daily allowance of Bread withheld from them, which keeps them hayl and strong, that they may live and be Able to follow their business; or if it be, the bottome foundation fails, and the whole frame must be left to sink and ruine with it for want of sustenance, or undersustentation: Unless by an unhallowed presumption we dare go on Tempting God in stead of Trusting him, still urging him to do, and expecting he should do, even ordinary miracles for our extraordinary preservation (and then daily miracles would scarce be any wonders,) putting him upon more work yet, after his *Consummatum est*, to multiply loaves for his improvident Disciples, and leading him once more out of the way into the Wilderness, to lead us out of the path of his ordinary course of Providence to expect food from Heaven, when there is plenty enough upon Earth: Which if, and the boldness of our unreasonable presumption rather then well-instructed Christian faith, could be content to put upon Him, Whether yet his servants who are to do the work, and being par-

Rom. 13.6.

ty

ty to the whole had need of ſome liberty of choice for refuſal of the conditions, could be content to accept for enough for their parts, and hardy enough to truſt to as their ſufficient *Viaticum* for this convoy and their journey, may not, (conſidering their humane frailty,) be without ſome doubt: As in the ſpace of forty years to hope for no reparation of cloaths, nor to put on a new ſhooe in half an age, and go provided with nothing but naked poverty to carry them through a dry and barren Wilderneſs, (where no water is,) Hungry and Thirſty, their ſouls fainting in them? Yes, They will; queſtionleſs, This and more, if they be called and compelled thereto; if the *enemies of God will deny them the way*, and the condition of things in an orderly Diſpenſation of Providence lead them to want as well as to abound: But all the friends of God will rather guide and help them in the direct right way to their *Canaan*, Neither *denying them bread and water for their money*, as (1) the curſed *Amorites* did, (but were after ſufficiently plagued for it,) nor money, if needfull, to buy them what they want for their comfort in the way; It being one of the moſt reaſonable things in the world, that they that give Heaven ſhould not want Earth, and They *that ſow to us Spiritual Things ſhould not but reap our Carnall*. To all which things anſwering and well agreeing, it was therefore religiouſly, piouſly, and prudently, as well as juſtly reſolved by thoſe Councels guided *Hen.* 8. to diminiſh nothing here, but to keep this ſettled and ancient Revenue of Gods honour free from the touch of ſacrilegious, profane, and imprudent as well as unjuſt hands, That no covetous *Gehezi* that loved his gain more then godlineſs, ſhould meddle with that belonged not to him: nor greedy unconſcionable *Iſraelite* with this portion of his Brother *Levi*, due (2) *for his ſervice he ſerves in the Tabernacle of the Congregation*, (and as neceſſary for the Common-wealth of *Iſrael*, as *Judahs*, *Simeons*, or *Benjamins*;) but when every one has enough, he ſhould be free from want, and by as good ſecurity as any other claims his Right by, his Tribe have its Own alſo, (not by benevolence but by Right,) and ſo have occaſion to *bleſs the Lord his God for the good land he has*

I have led you forty years in the Wilderneſſe: your cloathes are not waxen old upon you, and thy ſhooe is not waxen old upon thy foot. Deu. 29. 5. *See* Chap. 8. 4 Nehem. 9 21.

(1) Deut. 2, 27, 28. 30.

(2) Numb 18. 21.

has given him with the reſt of his Brethren: It being among our Divine Oracles, agreeable to the Laws of Nature, Equity, Reaſon, and Civill Commutative Juſtice, that He that gives ſhould receive; (1) *The labourer is worthy of his reward*; (2) *No one going on warfare is to march at his own charge*; *He that feedeth a flock ſhould eat of the milk of the flock*; And as *He* (3) *that waited on the Altar* heretofore, *did partake of the Altar* there, *So he that miniſtreth the Goſpel* now, *ſhould live*, ἐκ τοῦ Εὐαγγελίου, not of the Goſpel, but *of the Reward of his good meſſage*, or Glad tidings, as (4) hath been ſomewhat Critically, but very Judiciouſly and Soundly obſerved on that Text.

(1) Matth. 10. 10. Luk. 10. 7. 1 Tim. 5. 18.
(2) 1 Cor. 9. 7.
(3) Ver. 14.
(4) *By M. Mede in Diatrib. on the place*, pa. 329.

Thus then this Politick and herein wiſe and juſt Prince reſolved, and accordingly gave his minde in ſundry Acts paſſing his ſeal. The firſt whereof (clear enough in it ſelf, and conſequentially much to our purpoſe) was in cutting off Appeals from hence to *Rome*, and ſo making this Iſland-Church (as having no dependance of abroad,) a perfect Independent Congregation. For ſo it was then judged moſt expedient; that the affairs of *Judea* ſhould not be ſent neceſſarily to *Egypt* or *Babylon*; *Jeruſalem* might conclude all controverſies that aroſe in the Land where *Jeruſalem* was, and our Kings Crown being of Circular and thereby moſt capacious form, was large enough to involve and comprehend under it a reſolution of all thoſe difficulties might ariſe under it; And that Therefore all doubts ſhould be referred to him, Therefore all forain Appeals ſhould ceaſe, Whereupon ordered and ſet forth as followeth: 1. That this of *England* was an intire Monarchy: 2. Had ſuffered prejudice by appeals to abroad ſo long, as in Cauſes Teſtamentary, of Tythes, Oblations, &c. 3. It ſhould be ſo no more, but even thoſe cauſes (of Tythes again expreſſed,) be here put to a period: And therefore, 4. Enacted, **That All cauſes teſtamentary, cauſes of matrimony and divorce, Rights of Tythes, Oblations and Obventions, (the knowledge whereof by the goodneſſe of Princes of this Realm, and by the Laws and Cuſtomes of the ſame appertaineth to the Spiritual Juriſdiction of this Realm,)** (mark that Parentheſis, and the

24 Hen. 8. cha. 12

weight

weight thereof, and this engraven in the inside of a Law, inserted into the heart of an Act of Parliament, to give the testimony certainty of credit, and the thing as much assurance to us, as any thing we have, without the Bible; that all such causes, I say,) **already commenced, or happening hereafter, &c. shall be examined, discussed, and definitively determined, as the nature of any of the things aforesaid shall require,** (here at home,) With power, command and threat to all to do their duty; Appeals to whom they shall be made; and from whom; and where the finall decision shall rest; and All in All the Branches before specified: Which does as much as any one Parliament Law can establish and assure the then power of the Church, and thereby her following Acts, (even about Tythes expressed and by name,) and by consequent the Right and Property that should be at any time the result and fruit of all: Which must amount to we know what.

In the next year we have more of the same nature, in that concluding Proviso of 25 *Hen.* 8. 19. (before mentioned) about keeping life in the body of the Provincials (for a while, and till the new could be made) when the Pope the seeming Head of them was taken off. All know what dependance had been, and both to composition and execution, what influences were formerly derived from that forain power upon those Laws: When the Head is cut off, the lower Nerves use (and by consequent limbs) to lose all power and motion for want of intercourse with the brain wherein they were rooted; which might be feared or doubted here reasonably, and this made it necessary to infuse a new life of power that should serve (as then intended,) for a while, to quicken the old body, till a new should be framed by chosen workmen to fit the King better, as to making and execution depending solely on his authority. Accordingly done. The mentioned Proviso ratifies **all Canons, Constitutions, Ordinances, and Synodals,** till the thirty two should have proceeded effectually: If they have so done, we have gained enough, (even to this particular,) and (1) shewed how before: If not, this Howsoever we have gotten, that the strength

(1) Pag. 145.

ſtrength that is in the Provincials, all of them, Thoſe for Tythes before, and all other, (ſave what ſince revoked, as about Tythes nothing has) ſtands firm and faſt by Parliament Conſtitution, and the evident ſenſe of the words is to the purpoſe of theſe things unavoidable.

But if both theſe be yet remote, or not ſo fully home; wrapping things onely in implying generals (or conſequences) that take in Tythes but implicitly wherein by derivation, (which is always to us fallible) may be miſtake; Come we next to that which principally and fully, and in its finall and clear utmoſt ſcope intends and expreſſes Dueneſs, yea, Makes it, and where the words of the Law give the utmoſt any order can, a purpoſed Right and way for Recovery. Where is that? When the Cloiſters went down and the whole Eccleſiaſtical ſtate was thereby troubled not a little in 27 *Hen.* 8. Then was it needful, and Then was it done; and Then the right of theſe dues eſtabliſhed, intended to be perpetuall. How appears this? By the Statute made the ſame year, in *chap.* 20. which (thereon to make ſome judgement by the way) as it is among the next that are neareſt on this ſide toward us, So is it the utmoſt and fartheſt on the other, moſt mens weakneſs of ſight is able to diſcern or reach to the apprehenſion of, and yet they think they ken all, and reach (as they do, as far as they can,) the bottome whereon all is ſettled: But blame them not, their ſight is dim, and being hindred by buſineſs, idleneſs, averſeneſs to the thing, or manifold other ſorts of incumbrances, or diſtractions, that they cannot, or do not purifie or ſtrengthen it, by art, ſtudy, induſtry, and other painfull and labourſome means uſual of ſearching and gaining the truth, they work not beyond the ſphere of their power and ability, making able and fitting judgement of thoſe things, they have not the plain and ſimple knowledge or apprehenſion of, that thereby they may be ſo able and prepared to judge. They are reputed Learned, if they can little more then turn an Almanack, underſtand ſome plain Engliſh Authour, or but have ſeen a Statute, and then, as the *Aborigines* of *Italy*, which born and bred there, travailed never far from their ſimple homes, but won-

wonder at all abroad which ſtrangers tell them; Or, as ſome ſimple Ruſticks, who uſed to behold only the hils that incompaſs the valleys where they live, think them to be near the end of the world; if any thing be ſhewed them done beyond the mountains, they dare ſcarce believe a part, and will reſt much perſwaded that, whatever travellers tell them, is, (though they ſay, what we have heard and ſeen, declare we unto you,) little better then well-compoſed fables. For they walk by ſenſe, and not by faith, or that little faith they have, is confined to the things of their own narrow hemiſpheres; Even ſo Theſe, the utmoſt of whoſe knowledge, or higheſt of whoſe poſſible converſation or acquaintance, is but in ſome plain ſimple Engliſh Book, perhaps broken Statute Book, or perhaps but ſome Abridgemement or *Compendium* (*Diſpendium*, thoſe excellent inſtruments of advancing ignorance, and by help of little coſt or pains inabling ſluggards to know upon the matter as much as comes to juſt nothing,) build certainly and confidently upon this little as if it were All & enough, are reſolute & confident as if there were no more, and if any thing be obtruded or queſtioned farther, they beſtow but their attention or wonder, with (1) *Jewiſh* incredulity *they will not believe, nay, though a man tell it them*: Suſpecting all that is beyond the narrow compaſs of their very ſhort reach, and not much caring if all other ſuperfluities (they eſteem them ſo, becauſe they are not able to judge of them) were buried in the pit of utter forgetfulneſs: As little conſidering that their foundations have foundations, and thoſe yet again other, and other, and under, and yet farther under, and take away either, or the advantage and ſtay of either; the readieſt way is taking to ſtir all, to unſettle the firmeſt, to tumble down the higheſt, to leave order, happineſs, peace, and wealth, buried under a heap of rubbiſh, and the fair piles we now behold and enjoy, even All the fruits of an orderly and adviſed diſpoſition of things intombed under the ſcattered fragments of its own ruine and very confuſion. For old things are not to be caſt away without poſſible inconveniences to new; the foundations unſeen, are ſtill a part of the fair building, yea, do ſupport it; and take away the loweſt, the next

(1) Act. 13. 41. Habak. 1. 5.

ſtill ſinks of any thing, and by degrees All; Even ſo take away the firſt ſettling Laws, the under-praſtructions whereupon things had their *firſt ſettling* compoſition and ſtay, the reſt totters, and may expect ere long ruine in a State; Particularly for tythes, their faſteſt and moſt ſolid ſtrength ſeems below in the old unſeen acts of gift and firſt diſpoſition; the new can be never but a fair and preſently uſeful declaration, to ſet out uttermoſt to the ſight of the world, and as the paint that ſhines for peop'e to gaze upon; the ſtrength of the wall and houſe both is in the incloſed materials and rocky foundation. Yet becauſe theſe are of great eſtimation with the multitude, and ought indeed to be of ſome with All, I ſhall not ſhun to give them intire, in the opinion of the many enough to create a right, if nought elſe were, as if nought elſe were, perhaps they might: But as now things ſtand, are ſo far from doing it effectually and onely, that they do it not in any degree; Any more then if a preſent Act ſhould be made about Fines and Relieves, the next age might think it gave the Lord that Right we know he enjoys already; Or, as a new Act about Quit-rents and Herriots ſhould be miſtaken to raiſe or warrant the things no man but knows had right before; (The moſt in addition any new order can doe being but to rectifie, diſpoſe, or ſettle ſome new courſe about the things ſo due already, that 'tis that injury comes near a Theft, to ſubtract or deny the juſt payment of them:) So the following later Statutes nor do, nor can any more but to revive, quicken and eſtabliſh the ancient right of tythes, (extant and of long being before,) awaken mens dulneſs, inforce their payment, remove obſtructions that have grown in by corruption with time, and make that which is ſhine brighter and fairer by the fourbiſhing over of a new and freſh authority; Their dueneſs being that theſe ſtatutes did never intend to meddle with, infringe, further, help, nor hinder, but they were what they were before; and it were one of the moſt pitiful pieces of Ignorance befitting onely the Vulgar heard of unlettered Simplicians, and deſerving rather commiſeration then the exerciſe of any of our manly paſſions to entertain a thought to or toward the contrary. What! that theſe later

Sta-

Statutes created tythes! Made them due! Gave them! that their abrogation ſhould have a poſſibility of taking them *away*! and what the ſervice of God has to truſt to by virtue of their promulgation! This is ſuch a ſhallow conceit is onely worthy the weak brains of the multitude, where onely it poſſibly could be hatched or can be tolerated or indured; no more excuſable then if any ſhould ſay, *Ariſtotles* Aſtronomy gave the Sun a being in the Firmament, or *Charta Forreſtæ* firſt ſet up Game, or a preſent Law, if it ſhould diſpoſe of, did erect Parks, and Chaſes, or a new order about Eſcheats or Mortuaries, the next miſtaken Age might interpret to give them being and firſt beginning. But to the words of the Statute, which both in the beginning and progreſs have dueneſs of Tythes exiſtent and then in being ſuppoſed, and they are as followeth.

Tythes ſhall be paid according to the Cuſtome of the Pariſh, &c.
27 Hen 8. cap. 20.

For ſmuch as divers numbers of evil diſpoſed perſons inhabited in ſundry Counties, Cities, Towns, and places of this Realm, having no reſpect to their duties to Almighty God, but againſt Right and good Conſcience, have attempted to ſubtract and withhold in ſome places the whole, and in ſome places great parts of their Tythes and Oblations, as well perſonal as predial. Due unto Almighty God, and holy Church; and purſuing ſuch their deteſtable enormities, and injuries, have attempted in late time paſt, to diſobey, contemn, and deſpiſe the proceſſe, laws, and decrées of the Eccleſiaſtical Courts of this Realm, in more temerous and large manner then before this time hath bèn ſéen: For reformation of which ſaid injuries, and for unitie and peac to be preſerved amongſt the Kings Subjects of this Realm, our Soveraign Lord the King, being Supreme Head in Earth under God, of the Church of England, willing the ſpiritual rights and duties of that Church to be preſerved, continued, and maintained, hath ordained and enacted by Authoritie of this preſent Parliament, That every of his Subjects of this Realm of England, Wales, and Calais, and the Marches of the ſame, according to the Eccleſiaſtical Laws and Ordinances of his Church of England, and after the laudable Uſages and Cuſtomes of their Pa-

riſh, or other place, where he dwelleth, or occupieth, ſhall yeeld and pay his Tythes, and Offerings, and other duties of holy Church, and that for ſuch ſubtractions of any of the ſaid tythes, offerings, or other duties, the Parſon, Vicar, or Curate, or other partie in that behalf grieved, may by due proceſſe of the Eccleſiaſtical Laws of the Church of England convent the perſon or perſons ſo offending before his Ordinarie, or other competent Judge of this Realm, having authoritie to hear and determine the right of tythes, and alſo to compel the ſame perſon or perſons ſo offending to do and yeeld their ſaid duties in that behalf.

This was the Legiſlative part: follows order in caſe of contumacy, that the Ordinary or other Judge ſhal crave the aſſiſtance of the Juſtices to attach the party, and commit him to ward, till he ſhall recogniſe to yield quiet obedience, *&c.* Provided that this extend not to *London*, who were to have a way by themſelves: nor to hinder any remedy by due prohibition, *&c.* Nor any thing to continue longer then till the new Canon ſhould be made, which is not yet done, and whereof before enough. Mark the whole Tenour; Is here any thing of giving Tythes? Of wronging any man of a Farthing by a new and forced Impoſition? Of removing from one to ſettle on another? To enrich *Peter* by taking from *Paul*? Not a ſyllable. But all upon ſuppoſition, that ſomewhat was due before; Let that be paid; or if not, the allowed ancient courſe is awakened and quickened for recovery. So 'tis onely a Declaratory Law, as Sir *Edward Cook* ſpeaks often upon like occaſion, renewing what was, and rowſing up the dulneſs of perverſe and covetous men to pay, who were found backward; but this was a goad to force them on forward in the way they had went, and wherein they ought to go. It were a diſparagement to have here a Right ſettled to the Thing, and to it in our opinion, (yea, to our opinion it ſelfe) to think ſo.

But it ſeemeth things went not on by help of this new Law fully according to deſire: The Times were we know troubled, and many other Rights being both unſettled and removed, no marvell if theſe (Neighbours to them) were alſo ſhaken.

Divers

Divers no doubt wiſhed them more then ſo, quite down, the *mouthes* or rather *Gulphs*, or rather then both *helliſh depths* of ſacrilegious and covetous carnal men having never been but wide open to devour what ever was ſacred, and here ſtood gaping to ſwallow this morſell none of their Own, but due to man in Juſtice, as well as to God for Religion, and by Dedication. For going on to ſubtract the juſt payment, the complaint is evident, inſhrined in the ſacred Monuments of the Law it ſelfe, and entered the Parliament Roll for memory, with what the wiſedom of that Councel (the Repreſentative of the Nation) could afford for remedy of ſo large a ſpreading inconvenience. It was intended chiefly for the new Impropriator inabling him being Lay to make his Complaint in the ſpiritual Court, but reaching in all other alſo; with intent to let him in with them, by no means purpoſing to ſhut or let both out, and though with due reſtraint at firſt to that *examen* onely, yet Evaſions were after found that both have uſed to go out, where no more was intended but to let one in. The Law ſpeaks as followeth.

How Tythes ought to be paid, and how to be recovered being not paid.

Where divers and ſundry perſons inhabiting in ſundry Counties and places of this Realm, and other the Kings Dominions, not regarding their Duties to Almighty God, and to the King our Sovereign Lord, but in few years paſt more contemptuouſly and commonly preſuming to offend and infringe the good and wholeſom Laws of this Realm, and gracious commandments of our ſaid Sovereign Lord then in times paſt hath been ſeen or known, have not letted to ſubtract and withdraw the lawfull and accuſtomed tythes of Corn, Hay, Paſturages, and other ſort of tythes and Dotations commonly due to the Owners, Proprietaries, and Poſſeſſours of the Parſonages, Vicarages, and other Eccleſiaſtical places, of and within the ſaid Realms and Dominions, being the more incouraged thereto, for that divers of the Kings Subjects being Lay perſons, having Parſonages, Vicarages, and tythes to them and their heirs, or to them and to their heirs of their bodies lawfully begotten, 32 Hen 8. cap. 7.

Mark: Laws, duties, and lawfull Tythes.

or for term of life or years cannot by order and course of the Ecclesiastical Laws of this Realm, sue in any Ecclesiastical Court for the wrongfull withholding and detaining of the said tythes or other Duties, nor cannot by the Order of the Common Laws of this Realm have any due remedy against any person or persons, their heirs or assignes, that wrongfully detaineth or withholdeth the same, by occasion whereof much controversie, suit, variance, and discord is like to insurge and insue among the Kings Subjects, to the great detriment, damage, and decay of many of them, if convenient, and spædy remedie be not therefore had and provided.

Wherefore it is ordained and inacted by our said Soveraign Lord the King, with the assent of the Lords Spiritual and Temporal, & the Commons in this present Parliament assembled, & by Authority of the same, that all and singular persons of this his said Realm, or other his Dominions, of what estate, degree, or condition soever, he or they shall fully, truly, and effectually divide, set out, yield and pay all and singular tythes and Offerings aforesaid, according to the lawfull Customes and Usages of the Parishes and places, where such tythes or Duties shall grow, arise, come, or be due. And in case it shall happen any person or persons of his or their ungodly and perverse will and minde to detain or withhold any of the said tythes or Offerings, or part or parcell thereof, then the person or party being Ecclesiastical or Lay person, having cause to demand or have the said tythes or Offerings, being thereby wronged or grieved, shall and may convent the person or persons so offending before the Ordinary, his Commissary, or other competent Minister, or lawfull Judge of the place where such wrong shall be done according to the Ecclesiastical Laws. And so on to the Appellants paying Costs before he remove the Sute; Order to call in the Magistrates help in case of contumacy; saving Lands discharged of Tythes, and the City of *London, &c.*

This is that clearly is, and if there we no more, one would think, enough to settle as far as an Act of State or publick Decree can, both a right and a course of Justice, that men should both

both be apportioned these Dues, and know how to come by them; of which yet I remember my word before, and far deeper is laid, and upon more firme, and lower, faster ground then any single tottering Act the Foundation of this Right, which settles not but upon (or with) the whole body of immovable Fundamentals of the Kingdom, is clasped in with the Roots of Government, hath grown up with it through all her known progresses to the present State of perfection, is flesh of her flesh, bone of her bone, nor can, is much to be feared, without mortal violence admit a partition and segregation: such, as if mens private parcimony and pinching, wretched Covetousnes, joyned with improvidence and injustice, should go on to call for so great a mischief upon themselves, would indanger to shake the frame of the whole *Compages*, and by the same unadvised Principle of its unjust and violent removal leave little constancy or assurance of any thing. Which great Possessours had need chiefly to look to, and prevent if they can, upon any pretence; as of easing poor men of their heavy burdens, preventing Troubles usuall in separation, hindering costly Suits formerly multiplied, wherein Christs Minister had sometimes the hap or favour of Justice, and to get the better of his wrangling adversarie, that will remove the ancient Land-mark, will remove any; they which complain of this Imposition may ere long think others heavy; that will unsettle one property will unsettle another. None is more rooted then this, hath its armes and fibres dispersed through the whole body of the Laws Common Law, Canon Law, the Statutes, the Conquerours, S. *Edwards*, King *Edwards*, (the one past, the other to come) and hath indeed over-lived all the mutations and revolutions of State that have been ever since here we have account of any thing. Good Englishman take heed in time, thy lot is fallen to thee in a fair ground, yea thou hast a goodly heritage, if thou canst be contented, thankfull, quiet, serve God, and give every man his his Due. As *Hamor* and *Shichem* to the sons of *Jacob*, *The Land behold it is large*; Here is enough for every one, if we can do as we would be done unto, give every man his Own, and suffer the Law to be master and onely safe Rule Gen. 34. 21.

to

to walk by; I am thine own fleſh and bloud, and cannot but love thee, (yea, my ſelf in thee,) with ſuch tears of love I beſeech; Let no grating Incroachments procure mutual Trouble and moleſtation; Let not cruelty, covetouſneſs, ſelf-love, pride, malice, diſcontent, or pining envy that another man ſhould have more then our ſelves, that another ſhould have as much as our ſelves, that Gods Miniſter (our Governour in the Lord) ſhould have an Own with us, (his known and granted Due,) prevail, leaſt we wrap him with our ſelves in miſery and wo, and all together in rage, fury, trouble, war, and by theſe wofull ſteps at laſt, temporal if not eternal confuſion. If the publick had paſſed any thing to the contrary, This would alter the caſe; But I ſpeak as Things are.

CHAP. XXIV.

THere remaineth yet one Statute more, the laſt direct: He that reades the former, and conſiders their plain, open, and full Contents, would ſcarce think it requiſite their plainneſs ſhould have an expoſition, or their fulneſs and ſufficiency could need any ſupplement: but men love the things of this World Dearly, if any evaſion be to be made from parting with the love of their ſouls, they will finde it: Call they the things of this World Goods? their fears, hopes, cares, deſires, and all the affections of their ſouls ſhew an higher price in their eſtimation, as Beſt; and *loath to depart* they ſing, for Religion, Goſpel, the Service of God, and to redeem the acknowledged Ordinances of Heaven from the land of utter forgetfulneſs. Such is their worldly mindedneſs: I ſpeak not of all, but ſo many there were heretofore as made it needfull to add, what young King *Edward* did, and by the advice and Authority of his Parliament to make yet ſtricter proviſion that former good Laws ſhould not be perverted (though 'tis complained His is ſince as much perverted as any) and men might not withdraw their

their Dues upon any occaſion. This was done ſoon after he began his Reign, and in the words following.

In what manner Tythes ought to be paid 2 & 3 Ed 6. c.13.

Whereas in the Parliament holden at Weſtminſter the fourth day of February, the ſeventeenth year of the late Hen. 8 there was an Act made concerning paiment of Tithes predial and perſonal, and alſo in another Parliament, July 24. in 32 Hen. 8. another Act was made concerning true paiment of Tithes and Offerings; in which ſeverall Acts many and divers things be omitted and left out, which were convenient and very neceſſarie to be added to the ſame: In conſideration thereof, and to the intent the ſaid Tythes may be hereafter truly paid according to the minde of the makers of the ſaid Act: Be it ordained by the King our Soveraign Lord, with the aſſent of the Lords Spiritual and Temporal, and the Commons in this preſent Parliament aſſembled, and by the Authoritie of the ſame, That not onely the ſaid Acts made in the ſaid 27 & 32 of Hen. 8. concerning true paiment of Tithes, and every Artic'e and branch therein conteined ſhall abide and ſtand in their full ſtrength and virtus; but alſo be it further enacted by Authoritie of this preſent Parliament, that every of the Kings Subjects ſhall from henceforth, truly and juſtly without fraud or guile, divide, ſet out, yeld and pay all manner of their predialL Tythes, in their proper kinde, as they riſe and happen, in ſuch manner and form as hath been of Right yelded and paid within fourty years next before the making of this Act, or of Right or Cuſtom ought to have been paid. And that no perſon ſhall from henceforth take or carry away any ſuch or like Tythes, which have been yelded or paid within the ſaid fourty years, or of Right ought to have been paid in the place, or places tythable of the ſame, before he hath juſtly divided or ſet forth for the Tythe thereof the tenth part of the ſame, or otherwiſe agreed for the ſame Tythes, with the Parſon, Vicar or other Owner, Proprietarie, or Fermour of the ſame Tithes under the pain of Forfeiture of treble value of the Tithes ſo taken or carried away.

And be it alſo enacted by the Authoritie aforeſaid, that

at all times whensoever, and as often as the said predial tithes shall be due at the the tithing time of the same, is to be (1) lawful to every partie, to whom any of the same tithes ought to be paid, or his Deputie, or servant, to view and see their said tithes to be justly and truly set forth, and severed from the 9 parts, and the same quietly to take and carrie away. And if any person carry away his Corn, or Hay, or his other predial tithes, before the tithes thereof be set forth, or willinglie withdraw the tithes of the same, or of such other things, whereof predial tithes ought to be paid, or do stop, or let the Parson, Vicar, Propietarie, Owner, or other their Deputie or Fermours, to view, take, and carrie away their tithes, as is aboveſaid, by reason whereof the said tithe or tenth is lost, impaired, or hurt, that then upon due proof thereof made, before the Spiritual Judge, or any other Judge, to whom heretofore hee might have made complaint, the party so carrying away, withdrawing, letting or stopping, shall pay the double value of the tenth or tithe so taken, lost, withdrawn or carried away, over and besides the costs, charges, and expences of the suit in the same, the same to be recovered before the Ecclesiastical Judge, according to the Kings Ecclesiastical Laws.

(1) *In continuance of care that right be for remedying that evil mentioned to be redressed, and was redressed by the Provincial of* Sim. Mepham *before*, Cap. Quia quidam, tit. de decimis. Vid. Sup. pa. 136. & 171.

And, Be it further enacted by the Authoritie aforesaid, That all and every person which hath, or shall have any Beasts, or other Cattle tithable, going, feeding, or depasturing in any waste or common ground, whereof the Parish is not certainly known, shall pay their tithes for the increase of the said Cattle so going in the said Waste or Common, to the Parson, Vicar, Propietarie, Portionarie, Owner, or other their Fermours, or Deputies of the Parish, Hamlet, Town, or other place, where the owner of the said Cattle inhabiteth or dwelleth.

Provided always, and be it enacted by the Authoritie aforesaid, that no person shall be sued, or otherwise compelled to yeld, give, or pay any manner of tithes, for any Mannors, Lands, Tenements, or Hereditaments, which by the Laws and Statutes of this Realm, or by any Priviledge

Priviledge or Prescription, are not chargeable with the payment of any such tithes, or that be discharged by any composition reall.

Provided alwaies, and be it enacted by the Authoritie aforesaid, that all such barren, heath, or waste ground, other then such as be discharged for the payment of tithes by Act of Parliament, which before this time have lain barren, & paid no tithes, by reason of the same barrennesse, and now be, or hereafter shall be improved and converted into arable ground or meadow, shall from henceforth, after the end and term of seven years, next after such improvement fully ended and determined, pay tithe for the Corn & Hay growing upon the same: Any thing in this Act to the contrarie in any wise notwithstanding.

Provided alwaies, and be it enacted by the Authoritie aforesaid, that if any such barren, waste, or heath ground, hath before this time been charged with the payment of any tithes, and that the same be hereafter improved and converted into arable ground or meadow, that then the owner or owners thereof, shall during the seven years next following, from and after the same improvement, pay such kind of tithe as was paid for the same, before the said improvement: Any thing in this Act to the contrary in any wise notwithstanding.

And be it further enacted by the Authoritie aforesaid, that every person exercising Merchandises, Bargaining and Selling, Cloathing, Handicraft, or other Art or Faultie, being such kinde of persons, and in such places, as heretofore within these fortie years have accustomably used to pay such personal tithes, or of right ought to pay, (other then such as have been common day-labourers,) shall yearlie at or before the Feast of Easter, pay for his personall tithes, the tenth part of his clear gains, his charges and expences, according to his estate, condition, or degree, to be therein abated, allowed, and deducted.

Provided, And be it also enacted by the Authoritie aforesaid, that if any person refuse to pay his personal tithes in form aforesaid, that then it shall be lawful to the Ordi-

narie of the same Diocesse, where the partie that so ought to pay the said tithes is dwelling, to call the same partie before him, and by his discretion to examine him by all lawful and reasonable means, other then by the parties own Corporal Oath, concerning the true payment of the said personal tithes. Then after a Proviso about Easter-offerings.

Provided also, and be it enacted by the Authoritie aforesaid, that this Act or anything therein contained, shall not extend to any Parish, which stands upon and toward the Sea-coasts, the commodities and occupying whereof consisteth chiefly in fishing, and hath by reason thereof used to satisfie their tithe by Fish: but that all and every such Parish and Parishes shall hereafter pay their tithes, according to the laudable customes, as they have heretofore of ancient time, within these fortie years used and accustomed, and shall pay their offerings as is aforesaid.

Provided always, and be it enacted by the Authoritie aforesaid, that this Act or any thing therein contained, shal not extend in any wise to the Inhabitants of the Citie of London, and Canterbury, &c. And be it further enacted by the Authoritie aforesaid, that if any person do subtract, or withdraw any manner of tithes, obventions, profits, commodities, or other duties before mentioned, or any part of them, contrarie to the true meaning of this Act, or of any other Act heretofore made, that then the partie so subtracting, or withdrawing the same, may or shall be convented and sued in the Kings Ecclesiasticall Court, by the partie from whom the same shall be subtracted or withdrawn, to the intent the Kings Judge Ecclesiasticall shall and may then and there hear and determine the same according to the Kings Ecclesiasticall Laws. And that it shall not be (1) lawful unto the Parson, Vicar, Proprietarie, Owner, or other their Fermor, or Deputies, contrarie to this Act, to convent or sue such withholder of tithes, obventions, or other duties aforesaid, before any other Judge, then Ecclesiasticall. And if the sentence given finde not obedience, the partie to be excommunicate, in which state if he stand fortie daies, upon Certificate into the Chancerie, to have the Writ sued

(1) *How then hath suits been ordinarily and at first instance commenced where they have been?*

ed out *De Excommunicato Capiendo, &c.*

And before a Prohibition granted, the Libel to be shewed to the Judge &c. whose hands (the Eccclesiastical Judges) are after bound he shall not hold plea of any matter, cause, or thing, being contrarie or repugnant to, or against the intent, effect, or meaning of the Statute of *West.* 2. *cap.* 5. the Statute of *Articuli Cleri*, *Circumspecte Agatis*, *Sylva Cædua*, the Treatise *De Regia Prohibitione*, nor against the Statute of 1 *Edw.*3.*cap.*10. (as 'tis printed, but it seems to be rather from the second Parliament of 1 *Edw.*3. *ca.* 11.) nor yet hold plea of any thing whereof the Kings Court of right ought to have Jurisdiction: Any thing therein contained to the contrary in any wise notwithstanding, Except for tithe of Marriage-goods in *Wales.*

I have given this the more fully, because it seemeth the last direct binding law: and though it be at top, the bottome whereon all is settled; But so is it not: There is that lays five times deeper, as hath been shewn, and the axe must be laid to the root of the tree, even the bottome of all Law with us, and more then 500 years deep before the utmost can be reached here, which every private man should do well to think of, that dares give his thoughts scope to deliberate about eradication. What is it to go down so low, and strike at those humours by strength of Physick that have their sediment at the Root of Nature? *Galens* hand trembled the day before he gave his Rubarb, foreseeing thereby the violence he must offer to the whole by pulling away a part, and to fetch some superfluities away, the Body must be shaken: If vigour of nature should not here meet to assist, no less danger or fear then which it might import to think of purging out so settled corruptions; if tythes be such, and not as many take them, very wholesome juices. But to the Statute, the words whereof carrie as much shew of openness and plainness, and this written in the face of them, as can be expected or could be devised, and that for more then a tyrannically imposed exaction, a legal and just right of all accustomed Tenths to be hereby both payable and demandable: Nor do I fear to be mistaken, because lately perusing them,

them, the moſt Learned Lo. *Cook* I finde his interpretations agreeing with theſe my apprehenſions. Though why name I him alone, when all the Learned go the ſame way? the painful Students, the profeſſing Graduates, the whole Innes of Court, doubtleſs, and as well as the Reverend now Judges as the whole Bench of them ever ſince have gone on interpreting, declaring, and judging according to this opinion.

CHAP. XXV.

ONely there is one thing wherein (with due reſpects) I ſhould crave leave to give in mine opinion with ſome difference from that moſt Learned man, (which ſeems alſo his conſtant reſolution, becauſe he repeats it,) and it is, That the proper ſcene of the trial of theſe dues was not anciently in the Conſiſtory, till placed there by *Circumſpectè agatis, Articuli Cleri*, 18 *Edw.3.chap.7. &c.* but in the County Court; Which if, much of what before would loſe much of its ſtrength, But ſeems not ſo allowable for theſe following reaſons:

Cook in Inſtit.2. pa.661. *on this very Statute of* 2 Edw.6. *And before, on the Statute of* Circumſpectè agatis. pa. 489. *and in* Inſtit.4.chap 53. pa 260.

I. No ſuch thing is averred plainly and poſitively, in any of theſe Laws, or any other, And that had need be plain and poſitive ſhould have changed a thing, Such a thing in being.

II. The evident contrary is in them all either expreſſed or inſinuated. For, for the latter it mentions the remanding or diſmiſſing ſuits of Diſmes back from the Secular Judge, which muſt be ſure ſomewhither: And for the two former which might be anſwered to create that referrer, take them either together, or apart:

1. Together, and ſo they mention ſeverally a Prohibition: *Prohibiting, what ſay I?* That which never was?

was? Or, then was no where? This were nonsense as to the reason of it, and it were a great blemish to the wisdome and gravity that hath always attended those Assemblies to suppose they would declare any thing for Law that might imply contrariety or absurdity in truth and reason: As that, That should be prohibited to be, that had not been, or that the Kings Judges should deal circumspectly with the Eccleſiastical, not forbidding them to hold plea of that they never did hold plea. The rule is in nature before the exception, the thing before the limitation; And exhibition of something granted and used before there can be thereof a Prohibition; As there must be Marriage before Divorce, and a property of *Meum & Tuum*, before the Decalogue can take place forbidding to steal: Even so here, there must have been a trial of tythes before with the Eccles. Judge, before the Kings could be prohibited to prohibit him; his hands must have been loose, before they could be forbid to be bound, and He used to meddle before any could soberly and rationally meddle to hinder his medling.

2. Apart, and so all is yet plainer: for consider them distinctly, and by the first Chapter of *Articuli Cleri*, No prohibition was to take place to hinder the proper Court in matter of tythes, and surely then the business was there: And for *Circumspectè agatis* there is expres mention of their there trial. For the Judge of *Norwich* was not to be hindred, nor his Clergy, if, 1. they held plea of things meerly spiritual, as of penance, &c. in their Court Christian. 2. Nor if a Parson demanded of his Parishioners oblations or tythes due and accustomed, &c. (So that, They were there Then demanded:) and in the close: **In all cases afore rehearsed the Spiritual Judge shall have power to take knowledge** notwithstanding the Kings Prohibition. Which is not a little strengthned by a former Statute, (as it seems it is, though

though of the same year, for it is placed before it,) where (1) it is said: When once in a Writ of *Indicavit* the business is deraigned in the Kings Court (that the prohibiting Patron can sustain no considerable loss in any part of his Lay Advowson,) presently as it comes to be a case of tythes it is sent back to the Court Christian, and (2) **the plea shal passe there so far forth as it is deraigned in the Kings Court.**

(1) Westm. 2. c. 5. 13 Edw. 1. in Pultons *Abridg.* p 50

(2) *The same Statutes* (*of* Articuli Cleri, Circumspectè Agatis, & Westm. 2.) *allow to the Spirituall Iurisdiction cognizance of a fifth, and of all parts lesse then a fourth of the value of the Church in tythes controverted between two Parsons. And no* Indicavit *is grantable to forbid the suit of one of them commenced for any lesse part in respect of the Patrons Right onely. Neither upon them by consequence hath any Writ of Right of any part of Tythes that appears not to be a fourth part of the Churches value been allowable. So expoundeth M.* Selden *in his History of Tythes*, pa 427.

III. The Stat. of 1 *Rich.* 2. 13. mentions it then, as *Of old*, and had *Wont to be*, that tythes should be tryed where they were sent, but had been lately restrained; which had been very inconveniently said of such late times as were so little before as almost within an hundred years, especially by a grave Parliament, as was urged before, which useth to measure words and know things. But of this sufficiently there.

IV. The Statute of Consultation, alledged also before, was made 24 *Ed.* 1. *sc.* before two of the three alledged, and so speaks as could not be supposed more plain against stopping the Ecclesiastical Judges by Prohibition: which shews surely they did proceed then.

V. Review and call to mind what was said before here, (3) both of erecting the Ecclesiastical Court, and trial of tythes there, and how long, (for they were under the Canon) and this will be much toward, or reach home to the clearing of the whole business.

(3) Pa 103, 104. &c.

VI. Examine things according to their nature, and they would seem always fitliest here considerable: For who looks upon things as they are, and thinks not every man fittest to take care of his own matters? The Church fittest to look to the things and support of the Church? Or, that the maintenance of our Religion could have been ever anywhere more fitly inquirable and determinable of, then in the Court Christian

ſtian, the Court of Religion? Yea, even frther for this reaſon, becauſe they were *ſpiritualibus annexa*, as *Bracton* calls them ordinarily, they muſt be in way of tryal *ſpiritualitati annexa*. And hence alſo we finde the purpoſed and diſperſed tractation of them, as in their proper Cell, in the Canons; Not in the Statutes, nor in the Year-books, nor in *Bracton*, nor *Fleta*, nor the Common Law it ſelf, (of late days,) for the nature of them brought them elſewhere for Regulation and Tractation; Why not? Yea, neceſſarily Therefore to the anſwering Court for diſcuſſion.

VII. Take the opinion of one, not leſs Learned (without diſparagement,) then that Learned Juſticer, who with judgment and much freedome inquired here into, and purpoſely long ſince; And he ſettles the Juriſdiction from the County to the Conſiſtory by the Conquerour, as before. (1) His 14. Chapter is a Judicious and Intended Hiſtory of that Juriſdiction, which having found commixed with the Secular under the Saxons, and Danes, He makes them part with the Conquerour: He produces ſome inſtances of Caſes ſoon after reaſoned and determined before the Eccleſiaſtical Judges, and with equal diligence is troubled to find, as a rarity, ſome other in the Kings Court ſo low, as about *Hen.* 2. and King *John*, and then Regularly they began to come to the Church alone, and nere there handled at firſt inſtance onely. This, (and it hath been ſo ever ſince) is long before *9 Edw.* 1.

(1) Selden *Hiſt. of Tythes*, cap. 14.

VIII. The Stat. *De Regia Prohibitione*, ſeems made when before. The print has it indefinitely for *Hen.* 3. or one of the firſt *Edwards*: But ſith no evidence is for any of theſe, the place and manner of entring may give it to paſs that it was in the former, ſith, as before, in the leaſt deceiving or to be ſuſpected way of entring in Manuſcript of about thoſe times written, it is caſt in among the Laws of that date, and by name before the Statute *De Biſſextili*, made 21 *Hen.* 3.

IX. Plainly in another Manuſcript of that Kings Raign, among other grievances which the (2) Clergy in a Synod at *London* repreſented to *Otho* the Popes Legate, deſiring him to repreſent them to the King for remedy; One was, The laviſh uſe of the *Indicavit*, whereupon, *Solent Juſticiarii Domini*

(2) *Annals of* Burton, *in M.* Selden, pa. 439. *And obſerve what follows in* Rob. Groſſetell *his complaint there next, eſpecially that*, A ſeculari n. Iudice diſcin- di non poterunt, *pa.* 431. *and the advice of the Synod at* London, p. 433

Domini Regis judicare, quota pars decimarum peti poſſit vel debeat coram Judice Eccleſiaſtico: which was to binde the hands of that Judge, preſuppoſing therefore certainly, and therein that he had then ſome liberty to uſe them. And another Article: *Item ne currat Prohibitio Domini Regis, ne Rector Parochialis Eccleſiæ impetat eis qui percipiunt decimas infra limites Parochiæ ſuæ.* There needed a Prohibition then to ſtop the uſuall courſe of the Parſons, ſuing for the tythes of his Pariſh; where? think we.

(1) Decimæ quatenus decimæ debent in foro Eccleſiaſtico interpretari. lib. 6. cap 37

X. To omit (1) *Fleta*, who might be but under *Edw.* 2. (and yet many paſſages are in him fair for proof, that as ſure they were then, ſo things had continued from *Bracton's* time:) But for *Bracton* by aſſurance enough 'tis evident from him, that he often mentions tythes as *Spiritualibus & ſpiritualitati annexa:* and indeed he that can judge any thing by complexion of things, will be apt to paſs his ſentence from their nature; they were not far off from Cauſes Teſtamentary, Matrimonial, and other of tendereſt like nature and conſequence, then knowne to have their walke here. Among other (2) Exceptions (treating of them in general,) he lays one ſort againſt the Juriſdiction of the Court, deſcribing and defining what each is, and coming to that Section, *Quæ pertinent ad forum Eccleſiaſticum, & quæ ad forum ſeculare*, among other things this comes in: *Nec pertinet ad eos* (the King and Secular Judge) *cognoſcere de iis quæ ſunt ſpiritualibus annexa; ſicut de Decimis & aliis Eccleſiæ proventionibus.* Item, *nec de catallis quæ ſunt de teſtamento vel matrimonio.* After proceeding to the Common place of Prohibitions, (3) *quando & in quibus locum habet Prohibitio, ſicut de re ſacra, &c.* when allowable, when not; They do lay he ſays in caſe of lay fee, &c. but they do not when the doubt is *de aliquo ſpirituali, vel ſpiritualitati annexo:* Is tythes any ſuch directly? It follows: *Item locum non habebit prohibitio ſi agatur de decimis:* which gives more then their Juriſdiction here, here alone without any removal; a Prohibition could not prohibit, and it had been vain again to ſuppoſe a Prohibition of that might not be prohibited. This is farther that alone that takes place to cauſe a ſuit to be new graffed

(2) Lib. 5. Tra. 5. de Exceptionibus, cap. 2. fect. 5. fo. 401.

(3) Lib eod. cap. 9. & 10 fo. 406, 407.

(1) graffed from a Clerk to the Patrons name, bringing (upon ſuppoſition of wrong done to him in his Lay-Advowſon,) the main to the temporal Judge by *Indicavit*; And this not only if the whole tythes were in queſtion, but a (2) fourth part, a fifth, or a ſixth, but no farther: for ſo far the Writ of *Indicavit* would then reach, though (3) ſince it bee altered, and to the fourth part limited. Again, *Item* (4) *locum non habebit prohibitio de recenti ſpoliatione, ut ſi Clericus Clericum ſpoliaverit de Decimis vel aliis de quibus cognitio pertinet ad forum Eccleſiaſticum*, in another place. And yet again in another, they are both ſtyled (5) *Res Spirituales* (not onely *Spiritualitati annexæ*, in their Juriſdiction as was alledged, where (6) before, but *Res* (7) *Spirituales*,) and are ſaid to ſhift faces and change ſhapes; now for This, anon for That; One while for lay, Then for tythes, and back again ere long (as it may be) to Temporals. As Lay, *Laica catalla*, So they are under the ſecular authority: As *res decimatæ*, tythes marked out, ſo under the ſpiritual: and as ſold returning back again to *Weſtminſter*. *Quo teneam nodo?* yet thus it is, and the thing the ſame under ſeverall ſuppoſitions and conſiderations. Many other ſuch aſſertions, ſuppoſitions, and intimations there are in him; The whole frame of whoſe Diſcourſe bends this way, or is managed as ſuppoſing things thus, and I am confident he hath not any thing to the contrary. As for *Glanvil* who was before, he mentions the Court Chriſtian often, but never tythes tryed there that I could finde, (though *Glebe* often;) This I confeſs: But then withall he mentions them not all to trial, nor as here, nor anywhere elſe, and ſo his authority is to be drawn neither way. *Bracton* dates from the fartheſt backward beſides. And he hath as hath been ſeen.

(1) Cap. 4. ſect. 1. fol 402.

(2) Ib. ſect. 2.

(3) *By the Statute of* Weſtm. 2. ca 5. Circumſpectè agatis, ſect 2. & Artic. Cleri, cap. 2. *Whereof ſee a notable diſquiſition in M.* Selden, de dec. cap. 14.

(4) Cap. 10, ſect. 6. fo 408.

(5) Ca. 16 fo 411

(6) Cook Inſt ubi ſupra.

(7) Bract fo. 412

And theſe things do, I reſt aſſured, ſecure the thing undertaken for the Juriſdiction of tythes ſooner in the Conſiſtory (and by conſequent their right) then was allowed by that moſt learned man. I hope his friends and favourers will not take it amiſs that a Pigmy dare confront a Gyant, or *Hercules* in his power have ſome oppoſition by a weak and comnon paſſenger: *Magis amica veritas*, it muſt be ſo with

me, and before whomſoever the beauty of Truth moſt gracious and lovely. *Exoſculor*, I profeſs to love and reverence the memory of that moſt deſerving man, both bleſſing and admiring the footſteps of his ingenouous ſedulity, wherever I ſee him tracing with ſo much care, induſtry, eloquence and gravity, the windings and turnings of his ſacred profeſſion, (for he was a Judge of *Iſrael*:) But *magna eſt veritas & prævalebit*, Truth hath the greateſt command, power, and luſtre with me before All, and muſt ever prevail before any opinions, perſwaſions, perſons or names of men in the world. Which I take to be here, that the Juriſdiction of tythes was not made a branch of Church-power by force or permiſſion of any ancient Statute, but a native and connatural branch of her firſt power, born with it and receiving life in this world, and hath been bred, continued, conſerved, and brought up with it hitherto, nor ſince that Court has been, but this hath been a part of its work through all ages and generations. And ſo ſhould I have done with this Statute, (whoſe comments have occaſioned this digreſſion,) but that finding there a clauſe for perſonal tythes, yet in force, and the things due, but little ſaid of them elſewhere, and this thought the Onely ground; For illuſtration of a dark truth, and clearing their doubted right, I think it not amiſs to continue a few ſteps more beſides the direct way, to enquire preſently what deeper radication they may be diſcovered to have then the bare command of that ſingle authority: For no queſtion is, but they are due, and in conſcience ought to be paid, as well as other dues, the Law remaining, whoſe Dueneſs ariſes onely by the word of the Law: *Neceſſitate præcepti*, as we ſay, meerly by vertue of the commandment; no other equity or neceſſity of the Thing appearing, but onely becauſe they are ſtated ſettled Rights, by like reaſon whereto here. He that denies my Heriot or Relieve, may as well his half years rent; He that ſhuffles for his ſuit or ſervice, Homage or Fealty, by like reaſon (why not?) for his Corn or money: For the ſame Law gives the ſame Due to all; They ſtand upon the ſame bottome, are brought in by the ſame Spring, and if this prove too weak for the one, it may not be long ere Thence the other fall ſhort of Home alſo.

CAP.

CHAP. XXVI.

AS to Personal Tythes then, (to lay the whole under one view,) two things very material are to be observed to have been laid down before in the bosom of the alledged Law: 1. That they were not now set up, but the Statute in making them payable sayes they shall be paid where for fourty years past they had been: (which if it had not been here averred, without any great difficulty might have been made good from the condition of things, But we take that is.) 2. There was not only an Usage but a Right: So are the words; All persons shall pay where for time past they have paid, or of Right they ought to pay. A Right then, and an Usage, a Title and a Possession are already secured. Thus from the Statute, and beyond the Statute; but we must go much higher to search how. And we may not seasonably urge the Patern of *Abrahams spoils to Melchisedek*, nor what I finde (1) urged, *Decimas & primitias manuum tuarum*; *Deut.* 12. And *Bring ye All the Tythes into the Lords store-house*, (not some but All,) *Mal.* 3. Or, which is most pertinent, *Give the Lord his honour with a good eye*, ——— *and dedicate thy Tythes With gladness: Give unto the most high as he hath enriched thee* (as 'twere howsoever,) *Ecclus.* 35. 8, 9, 10. *Da secundum Donatum ejus*, is the vulgar there: whence *Alensis* nimbly, *Si ergo ex dono Dei possidentur omnia quæ acquiruntur justo negotio vel arte, de illis decimæ dandæ erunt*: If we must render of all God gives, and he give what ever we get, then of all we gain in what just way soever: nor yet may I insist upon Councels and Fathers, as *Hierom*, *Chrysostome*, *Gregory*, *Ambrose*, *Augustine*, &c. the latter of whom (2) speaks out fully indeed, *Quod si decimas*

(1) By *Dr. Tildesley* in his *Animadversions on Mr. Seldens Preface to his History of the Tythes*, Qui Religiosiores sunt inter Judæos, loco decimarum eleemosynam pendunt de omnibus lucris; decem aureos de centum, centum de mille, &c. Pirki Abbuth. remembred by *Mr. Selden* in his review of cap. 2. p. 455.

(2) De tempore Serm. 219. Tom. 10. pa. 1169.

mas non habeas fructuum terrenorum quod habet agricola quodcunque te pascit ingenium Dei est, & inde decimas expetit unde vivis: (good Reason and Divinity both;) *De militia, de negotio, & de artificio, redde decimas; Aliud enim pro terra dependimus, Aliud pro usura vitæ postulamus.* If thou hast no Land, Render of that thou hast, of Gods guift whatsoever, is the short of it. But all these are without my pale. And so it may be is also that of the (1) Decrees and Decretals; and yet perhaps not neither, by reason of the last Proviso of 25 *Hen.* 8. 19. which speaks doubtfully, and whether all Canons before of force remain not yet so here, (that are not against the Temporal State,) as well as our Provincials, is at least from the words very dubitable. But our own binde strongest, like our English Oak which admits no compare; So nor for strength and certainty to us our English Constitutions. Look then at first far back, and even so far as before the Conquerour, somewhat was thought on here tending this way. Some Canons I finde or Rules of good credit digested and left to us under the Title of *Excerptiones Egberti*, who lived about the year 750. (soon after the first faith of the Nation,) and had it seems for his own use and others laid together sundry Rules which he judged most expedient to be followed; among which, (after for Tythes in general) for Personal. (2) *Decimæ igitur tributa sunt Ecclesiarum*, (saith he) *& egentium animarum. O homo, inde Dominus expetit decimas unde vivis. De militia, de negotio, de artificio redde decimas.* Tythes are a Tribute due, Therefore pay of all thou livest by: of thy spoiles, of thy work, and of thy handicraft. Of about *K. Knouts* time were also some other (3) affording reason again with command, and equity mixed with true piety. *Admonendi sunt qui negotiis ac mercationibus rerum invigilant, ut non plus terrena lucra quam vitam cupiant sempiternam.* Merchants and Tradesmen are to be minded that they look not more after gain then godlinesse, their estates then their souls: and a little after, *Sicut ab his qui labore agrorum, & cæteris laboribus victum atque vestimentum quærunt, & necessaria usibus humanis acquirere inhiantes instant, decimæ & eleemosynæ dandæ sunt; ita his quoque*

(1) De militia, de negotio, de artificio redde decimas. Caus. 16. quæst. 1. C. Decimæ. Quid est fideliter decimas dare? nisi ut nec prius, nec minus aliquando Deo offerat aut de grano suo, aut de vino suo, aut de fructibus arborum, aut de pecoribus, aut de horto, aut de negotio, aut de ipsa venatione sua. Caus. 12. ead. Quæst. 7. Ca. Quicunq; De vino, grano, fructibus arborum, pecoribus, hortis, negociatione, de ipsa etiam militia, de venatione, & de omnibus bonis, decimæ sunt ministris Ecclesiæ tribuendæ, ita ut qui de his eas solvere neglexerint, Ecclesiastica districtione debeant percelli. Decret. Greg. lib. 3. tit. de decimis, cap. 22.

(2) Vid. Excerpt. Egberti, can. 100. in Spelman. Comil. pag. 368.

(3) Capitula incertæ editionis, cap. 15. in eod. p. 610.

que qui pro neceſſitatibus ſuis negotiis inſiſtunt faciendum eſt. Unicuique enim homini Deus aedit artem qua päſcitur, & unuſquiſque de arte ſua, de qua corporis neceſſaria ſubſidia habet, anima quoque quod magis neceſſarium eſt, ſubſidium adminiſtrare debet. As of Husbandmen and day-labourers Tithes and Almes are to bee ſpared, ſo of thoſe that deal in any Trade; for God gives to every man how to live, and what from his gift man ſo uſes to provide for his body, much more ought he therewith to be at coſt to provide for his ſoul. But the moſt obſervable of this intervall was that given before from King *Edwards* Law, (1) *De hortis & negotiationibus, & omnibus rebus quas dederit Dominus, decima pars, &c.* of merchandiſe, and All the Tenth to be returned to God that gave: which yet becauſe it was there both given and repeated needs not here again to be tranſcribed and recited. Remembered be it that whereas before the Common Law was ſaid to be made up of certain pre-exiſtent materials, They as to this particular may have been ſuch Laws as theſe: Whereas alſo thoſe parts were after made up into one common body by King *Edward*, in giving this he may ſeem to have given the extract of Thoſe (of this Nature before him:) Laſtly, whereas thoſe ſo diſtinguiſhed Laws had after ſeverall Scenes whereon things within their ſeveral charges were acted, what was Eccleſiaſticall being ſeparate for the Conſiſtory, what Temporal left to the Shire Court, *&c.* Therefore we may not now reaſonably hereafter look for any thing more of theſe perſonal Tythes but where they were, that is, among the Synodals and Provincials, and there indeed we finde, nay we have both found and already given them before remembred and recited: as, What ſaid (2) *Rob. Winchelſee? Statuimus etiam quod decimæ perſonales ſolvantur de artificibus & mercatoribus, ſc. de lucro negotiationis.* We appoint perſonal Tythes be paid by handicrafts-men and merchants. *Similiter etiam de Carpentariis, Fabris, Cœmentariis, Textoribus, &c.* and of Carpenters, Smiths, Maſons, Weavers, and all workmen. What (3) ſaid he again? *Decimam lactis, &c. venationum, artificiorum, & negotiationum*: of hunting, handicrafts, and merchandiſe. What ſaid *Simon Mepham* and

(1) In eod p. 621. cap. 9.

(2) Lindwood lib. 3. tit. de decimis cap. Quoniam propter.

(3) Ib. Cap. Sancta Eccleſia.

Jo.

Jo. Stratforth, but to confirm and inforce what before he had before ſtated? and as well might then thoſe that were predial and acknowledged due have been denied as theſe, They ſtood both on one bottom. So *Edward* 6. found them, and did by no means raiſe and impoſe this perſonal burden, but bound it on to continue faſt where it had been, and was; inſomuch that in ſtead of barren words, and empty lines, a ſpecial *emphaſis* is to be acknowledged in that part of the clauſe laden with much Truth, where **Every perſon exerciſing merchandiſes, &c. being ſuch perſons, and in ſuch places as have within fourty years paſt uſed to Pay Perſonal Tythes, or of Right Ought to pay (ſave day labourers) is commanded yearly before** Eaſter **to bring in their Dues.** They were uſed to be paid: Then as Now, and Now as but Then, they muſt and ought. To make the Payment whereof more ſure, or ſupply the defect, there was appointed a diſtinct (1) mortuary, of thoſe that were not very poor, for compenſation of ſuch perſonal Tythes ſubtracted. The force of all which things, and particularly the two Conſtitutions before mentioned was ſuch, even before the ſtatute, that as grave a (2) Lawyer (as I believe) any lived in *H.* 8. time, though he wonders at ſome particularity here, that they may be demanded, and if denied, ſued for, whereas in other places they are left it ſeems to the Debtors conſcience, yet he avers their Dueneſſe, deſcribes their Nature, ſpeaks of them as of known Right, no more queſtionable then predial; And what ſhould have been done about them if the intended Reformation, ſo often ſpoken of, had proceeded to maturity, might be gueſſed by that which was. For (3) four

(1) Si decedens tria vel plura cujuſcunque generis in bonis ſuis habuerit animalia, optimo cui de jure fuerit debitum reſervato, Eccleſiæ ſuæ à qua ſacramenta recepit dum vixit ſine dolo, fraude, ſeu contra dictione qualibet pro recompentatione ſubtractionis decimarum perſonalium & oblationum ſecundum melius animal reſervetur poſt obitum, &c. tit de conſuetud. cap. ſtatutum, per Simon. Laughan.

(2) St. Germane, l.b. 2. Dial. ult. fol. 172, 173.

(3) Magnam indignitatem habet à tenuibus & laboriosis agricolis decimas annuas Eccleſiarum miniſtris ſuppeditare, mercatores autem opibus affluentes, & viros ſcientiarum & artificiorum copiis abundantes, nihil fermè ad miniſtrorum neceſſitates conferre, præſertim cum illis miniſtrorum officio non minùs opus ſit, quàm colonis. Quapropter, ut ex pari labore par conſequatur merces, conſtituimus ut mercatores, pannorum confectores & artifices reliqui cujuſcunque generis, ac omnes qui ſcientia vel peritia qualecunque lucrum percipiunt, hoc modo decimas perſolvant: pro domibus nimirum atque terris quibus utuntur, & illarum ratione decimas prædiales non ſolvunt, quolibet anno dabunt annuæ penſionis decimam partem. Reform. L. Eccleſ. tit. de decimi. cap. 14 p 122. vid. etiam cap. 13. 15, 16.

ſeverall

ſeverall Chapters are taken up there about the diſpoſition of them, the heads whereof were given before, and into the Contents of one of them this very Statute is taken and authorized; If there had been a new Canon Law, thoſe Chapters ſhould have been part of it; As there is none, the old is of force, and in all its power beſide the Statute, and that again by Statute. Neither had the thing onely conſideration in Books; we finde regard given to it in the Acts of Men, and the World buſied, not to ſay very much troubled about the Wealth that came in by them. The great and vexed Controverſie in *Oxford*, in *Henry 6.* time about *Fr. Ruſſell* and his Doctrine which took up the learned Diſputes of the Univerſity there, and ſmoother Conſultations alſo of the Convocation at *London*, and after was tranſmitted to *Rome*, and there not ended, was onely about the neceſſary and fit Receiver of perſonal Tythes; while he maintained, it ſeems, to his own advantage, and againſt the Secular Prieſts, that they might be given as well to the poor as the Church, as we ſay, to the Monk as to the Prieſt, (and then he ſtood ready as a Mendicant, as the Prieſt for his Pariſh:) They on the contrary to the Church onely, and ſo He and His were excluded. The determinations it ſeems ſettled (the *major* part) againſt him, and he for his errour was injoyned to recant publickly at *Pauls* Croſſe, leſſe then the performance whereof would not ſerve the turn, and all the Pulpits in *England* commanded to ring of what an Hereſie *Fr. W. Ruſſell* had maintained (indeed againſt the Pulpits) about perſonal Tythes, now to be cried down by all opportunity, and the utmoſt of poſſibility. The Particulars I finde (1) related at large; the uſe I make of them is onely this, that Theſe things Have been of Real conſideration, not an empty Book Order, but ſuch as had influence upon things and produced viſible effect, the Conſultations of Men having been taken up about the diſpoſall of the ſeen fruit of them, much buſying, yea not a little troubling the World, for long ſince, and ſo long together, and ſo no doubt things ſtood to *Edward 6.* time, and ſo he found and left them. Whereupon, and that ancient rooted Right (ſpreading likely further, as might be found by further inquiry, if it were alſo needfull,

(1) *By Mr. Selden in his Hiſtory of Tythes, cap. 7. Sect. 5.*

ful,) he ſettled his new vote and order of confirmation as it were: What, to make perſonal tythes due! to give them life and raiſe them to being! Nothing leſs: to revive and quicken the Law, that dull men that were to pay, and had wont, might be rouzed up to a ready and obedient performance of that which was their ancient known duty, to awaken juſtice, and force backward men to bring in their publick tribute, which though for Gods-ſervice their worldlineſs had rather perhaps were left out or let alone: Due they were before; This vote of publick power onely cleared the channel that the in-come might be it ſelf, and come in freſh and free, without impediment, for which His words and Act reach, we ſee, fully his meaning.

By occaſion of which clauſe of ſuch import, thus much: Thus much of Perſonal Tythes, And thus much alſo for that laſt binding Act of State both for perſonal and predial, in 2 & 3 *Edw.* 6. Behither which is little but the implying Petition of Right, (in the grant of All mens, without doubt meaning Theſe,) That other was the laſt, clear, full, expreſſe, purpoſed and direct binding order. Not yet of no force; Even for it ſelf; though the chief ſtrength (beſide the Legiſlative power of the Land, here drawn into Act) is in abroad and before; The Root that ſupports and cheriſhes moſt powerfully (both predial and perſonal ſtill,) laying farther in the Right created by ancient Conſtitutions, deeper then poſſibly can be thought by any new declaration. For we ſhall ſeldome meet with a tree that planted the laſt year hath attained much ſtrength; It muſt have time to root and ſettle, before it can be able to endure the ſhock of a tempeſt, or make good its being againſt any forceable oppoſition: So the beſt and uſefulleſt Conſtitutions of State are thoſe experienced firm ones, that have lived, ſummered and wintered with us, as we ſay, and given approbation of their agreeing with the ſoil by having ſafely endured there all influences; Settling and gathering ſtrength, (as it uſes to be, and Muſt) by degrees, and in and with time claſping in faſt to be made one, & co-incorporate with the ſoil of a Re-publick. Raſh decrees uſe to be as ſoon revoked almoſt as made, beſpeaking

little

little but uncertainty at first both to themselves, and all things and persons that they are conversant about: Blessed are the days when the Aged decree Judgement, the ancient and experienced good Laws, I mean, are made the sure and constant rule of Righteousness, And even this Humane Ordinance hath so much in it of Divine, that it partakes of toward his nature who is Constancy and Immutability.

CHAP. XXVII.

But to go on to the mentioned Petition of Right, a great and bright star shining hithermost and very clear in the firmament of our Law; whose allowance vulgar apprehensions still gaze at for the great and onely stabiliment of all, as indeed an excellent and needfull stay it then was, when it was, of the subjects tottering property: But to look upon it as the onely bank and bulwark against tyranical invasion, both the settler of Right and Giver; the knowing know there is more then twice ten times as much dispersed abroad (though in *latebris* to plain English Readers) as this. Nor could the supream power without breach of trust, and transgression of duty have before, (and so it may still) invade the peoples Right, or without injury have then (and so it may yet) do injustice and unrighteousness. A Bond this was upon the former Covenant, a new lock added to the former bolts and bars to keep out invasion from above from protectours, now explicitly, purposely, newly, and afresh confirming to all their old Rights, (no more,) And say which: The Merchants right, the Gentlemans Right, the Noblemans, the Free-holders, and why not also the poor Scholars too? the Church-mans too? whose work is Church-work, and his Trade and Calling publick, holy, heavenly duty: that so having his Due,

he may the better do his Duty, having his Right, people may the better look for Theirs; and having his property to live on (his Living) secured him in peace, and with assurance, he may now (1) *serve His Lord above Alone*; and having nought of this vile, yet necessary world to interrupt and stop his course, he may now wait upon Him (2) *without distraction*. The rather considering what a prosperous and lucky hand he had in helping to procure as well the Charter, as this Petition, much of reason would stand on his side, that he should gather some of those grapes himself had helped to plant the sciences of, he should partake of the harvest he had sown, and reap some fruit of his own successful impetration; at least to have his own Right secured in that he helped to obtain to All. The Petition of Right. The title whereof gives: Petition exhibited to his Majesty by the Lords Spiritual and Temporal and Commons in Parliament assembled, concerning divers Rights and Liberties of the Subjects, &c. and The Contents, **Humbly shew unto our Soveraign Lord, &c.** (the persons before,) **That whereas it was declared** (34 *Edw.* 1.) **that no Tallage, &c. yet of late divers Commissions have issued, &c. And whereas by the great Charter, &c. no Free-man may be taken or imprisoned, or** (3) **be disseised of his Free-hold and Liberties, &c. but by the Law of the Land: yet, &c.** And some other things touching life, &c. **Now they pray that the like may not be done hereafter, &c. All as their Rights and Liberties according to the Laws and Statutes of the Realm; and that all Officers and Ministers serve in their places accordingly.** Whereunto the Kings answer being, **That Right be done according to the Laws and Customes of the Realm, and that the Statutes be put in due execution, that his Subjects may not have cause to complain of any Wrong or Oppressions contrarie to their just Rights and Liberties**; This not satisfying, upon reply this second personal answer was added, *Soit droit fait comme est desire*, Let Right be done as is desired; And this after expounded to be mistaken, if it were drawn to any other then the Ancient Rights and Liberties, which he willed, and no more. Where still we find Rights sounding

(1) Πρὸς τὸ εὔσχημον καὶ εὐπαρέδρευτον τῷ κυρίῳ. That ye may wait on and tuck close to the Lord, 1 Cor. 7, 35

(2) Ἀπερισπάστως. Not whirled and turned hither and thither, (as men use that are distracted with cares how to live;) for violent are the pullings of flesh & blood to preserve it self, and self-loving nature will look about before it yeeld to be suppressed or choaked. But that ye may attend this Thing alone, and serve your now onely Master without avocation, ib d.

(3) It might have been by the same reason, Whereas the Church had some Spiritual rights, and those contained in the Charter; Also priviledges and immunities granted there, &c. as before; Pray they therefore every man or sort of men may have their Own: And as much was after allowed under the generall word of Rights, and according to the Laws and Customs of the Realm.

sounding all along, and concession of Them, and in answer to such a Petition, the particulars are within the possible and easie view of every English mans eye, and they fitly All march under the Head of the Petition of Right. Now then I infer and argue: What is that was here granted? Was it not Right? Right to All? and one mans Right as well as anothers? Did not the whole Commonalty petition? Were not All heard? Was not All granted, and to All? And if those that wait upon the Temple of the Lord in *England* in his holy Service, had thereby then, and yet have, they and their successours an Own and Right, was not this then meant to be granted? and was granted and settled upon them Therefore thereby, nor can be revoked, but by the revocation of this, or a part of this Concession of Right? Each mans wrong is of the same nature, guilt, injury, crime, and grievance, Nor can they ever be interpreted but partiall and unjust sharers of such a claim to themselves, as, Any others having equall part with them therein, they can be contented earnestly to strive for their own, and will not be denyed, but for those others, think they may be excluded, (or help to exclude them) at pleasure, and no matter whether they partake of any share in the common allowed stock of Right. As if it were Theft to steal, but not from some: Injury to defraud, but the Red or Gray Coat, not the Black: The Law must hold in some cases, what need it in other? to retain him in possession of his Right that hath nine parts, but not him that hath right to the Tenth; One mans Own may not be taken away, nor injuriously invaded, but his Neighbours may, (that holds by the same Charter,) and himself outed, or spoiled, or wronged at pleasure, and That shield is large & strong enough to protect against al assaults the former, for the later is infirm & narrow, though it were seen to be made of the same breadth, strength and firmness. What equity is this? Should not every ones case that is the same be alike, and every Childes part equall in the same stock of the Common-wealth? Murmurers were in the Apostles time, and discontented fault-finders no doubt in ours; But let no private worldling be heard as speaking reason, that Right is wrong, or the expectation of this Right

is

is now to him and others grown burdensome. There is none fit to judge, who is able to say, Any part of the Law is Burdensome. Exactions are burdensome, injuries are burdensome, oppressions, spoliations, deprædations, undoings of those that are innocent and quiet in the Land, All iniquity is generally burdensome: But the Law is a gentle yoak, Justice lovely, Right a favour, the dictates of these never were nor ever can be rruly Burdensome; Unless, as Gods Word says, *to the disobedient and lawlesse:* ἀνυπότακτοις καὶ ἀνόμοις, *to the irreligious and sinners* (that have no true fear, or worship of God, for this would teach to obey every Ordinance of Man for the Lords sake;) ἀνοσίοις καὶ βεβήλοις, *to unsanctified and profane men* (that have never known true purication, whatever they pretend;) *patricîdis, matricîdis, homicîdis,* (fit company, 'tis pity they should be parted;) To *Whoremongers,* also to *Plagiaries, deceitful lyars, forsworn lyars,* and such other; To all these the Law is Burdensome, Blame them not, they are weary to beare it, 'Tis a beam to their backs, and lays on fast and close, wrapping them under everlasting as well as heavy inconveniencies: But that the Law is burdensome to any Just man, can hardly be believed by any wise man. 'Tis Gods great blessing to a Nation, it makes rich, happy, safe, and quiet where it comes; An humane Oracle for deciding humane doubts in matter of own and equity amongst men, the voice of Justice, the measure of Right, that gives to every one His, every one something, most men enough, all whatever they enjoy; Allotting upon grave consideration what they should have, why they should have, how much they should have, why no more, and generally upon good reason, why things throughout Be as they Be, (if our wisdom drew deep enough to fathome the reason of her profoundly prudent consultations, resolutions and dispensations) and shall we yet say, That Law is burdensome? My neighbours will is burdensome, his covetous desire is burdensome, his unjust, wicked, worldly ambition may be, to sit Umpire on my estate, to inquire what I have, to determine I have too much, but I shall have less, the superfluity of my abounding right (which is but one part of ten to keep me alive to serve God

1 Tim 1. 9, 10.

God in his Church already, whereas he has the other nine to ſerve none but Himſelf, or perhaps *Venus*, or *Bacchus*, or *Mammon*,) muſt be pared off to piece up ſupplies for his riot and prodigality, to feed the greedy worm of his covetouſneſs, or rather to help fill up the wide and inſatiable gulf of his craving ravenous and cruel ſoul; This were indeed, what were if this were not heavily burdenſome? But ſhall I ſerve the Lord Chriſt with ſuch an inſide? Shall I profeſs my ſelf a Church-member, yea, a member of Chriſt, the Childe of God, and an Inheritour of the Kingdome of Heaven, harbouring in my boſome a neſt of ſuch unreaſonable, griping, cruel, carnal luſts? Shall I go on to read the Scripture, profeſs the Light, hang on Jeſus Chriſt and all his Ordinances, with pretended love to his Law, and grudge or ſubtract any mans known worldly dues, refuſe to give every one his own, detract from the humane ordinance, and dare ſay in any caſe Right is wrong, or Law burdenſome? Shall my turbulent, greedy, envious, unruly paſſions prevail with me ſo farre to make me think my neighbour has too much, though it be his Own, I muſt covet it, I will have it, Nay, Gods Miniſter has too much, of his known Right, I cannot temper but I muſt covet my neighbour goods, That neighbours goods, (1) Gods Miniſters Right, Rob the Church, yea, perhaps rob God, and ſtarve, or occaſion the ſtarving of ſouls by withdrawing that which ſhould warm the bloud and quicken the bodies of thoſe ſhould and would feed ſouls in preſent, and diſcourage thoſe that are to come in hereafter? furthering in the leaſt degree or upon any pretence by my wilfull parcimony, that the thing we have ſo long feared, may at laſt fall upon us, That children may cry for bread and there be none to give it them, a worſe famine may pinch us then that of bread and water, even a famine of the Word of Life, that hungry ſouls may run hither and thither for meat, and grudge being not ſatisfied; from Pariſh to Pariſh, from one empty Church I mean to another, for the Ordinances of Life, and none be found in Sion to comfort her children, a well-inſtructed Teacher in *England* be as rare as was a man in *Iſrael*, and becauſe no more means is left to ſuſtain his natural life, One Preacher muſt

(1) *Let a man ſo account of us as of Miniſters of Chriſt, and Stewards of the myſteries of God,* 1 Cor. 4. 1.

must serve for twenty Congregations. Away *Pluto* and *Mammon*! Let *Judas* and *Achan* be for ever separate from the Congregation of the Lord! Curſed be *Ananias* and *Sapphira*, and all their brood! Let their poſterity never find fig-leaves to cover the ſhame of their ſin in this world, nor any thing but Gods mercies and Chriſts merits to ſhelter their guilty ſouls from condemnation in the world to come. Let me have ever light enough to know mine Own, Juſtice to give every man his Due, Religion to direct, I Ought to do ſo, Prudence to meaſure it out by the onely wiſe and ſafe Law, and either caſt away my Bible, (Gods Law,) out of my hands preſently, or ceaſe eternally to covet my Neighbours goods. One word alſo in the ſpirit of meekneſs, to him not hitherto thought of, that is, I take it eaſie enough to be led, but as it falls out miſerably out of the way, that follows the light of his eyes, and they guide him to errour, urging the Petition of Right for every ones and his own, and yet crying down tythes thereby, which being a Right can certainly have no diſcountenance, but muſt rather have a firm, conſequentiall eſtabliſhment by that Petition. *Philip*, *Philip*, underſtandeſt thou what thou readeſt? Do but ſay, I pray thee, what is it thou ſo importunately calleſt for? Is it not for Right? Civil Right? Every ones? Thy Neighbours as well as thine own? And Chriſts Miniſters, if he have Right, yea, Civill Right, hereby to his Tenth, as well as thou to thy Nine? If this; why perverteſt thou the right words of the Law, deſtroying again preſently what but now thou buildedſt up, and by or with thy hoarſe and importunate out-cries for this Petition, endeavoureſt to cry down tythes thereby, which being a Right (ſure Mans right is not Gods right) cannot but have thereby a clear and evident confirmation. Is not ones mans right of the ſame kinde with anothers? and as good as anothers? Muſt not thy Paſtors have been included in All? Or, couldeſt thou be content to have his little portion underſtood at leaſt to be ſtruck out of this book of temporal life to augment thy part, to a proportion of ninefold bigger then His already? What equity were this, or ſhew of Conſcience? Suffer I pray thee the word of exhortation, and be not offended

offended if I tell thee the truth: If thou be a Christian indeed, thou wilt not entertain a gentle reproof with disdain, nor repay meekness with rage, storming at him that would by the grace of God, and according to the light given him, deliver out nothing to thee but the words of truth and soberness. Ask thy Lawyer, and he will tell thee: Advise with the Learned in his own profession: Consult with the Potter about the things of his own trade. There is never a Judge at *Westminster*, never a Serjeant in their Innes, never a learned Councellour or knowing man in this Land, but will assure that tythes are as due (besides the rules of equity, *for work*, and generals of Scripture, *for competent maintenance*) by the Law, the rule of Civil righteousness among us, to their due receivers here, as any rent, or rent-charge, debt or bond, (not a benevolence, but a strict Right,) and that the settled and compleat body of the Law doth with as much unanimity, evidence, constancy, and aged consent agree to settle and say so for them; and yet doest thou contend, and urge a publick grant of right as an argument to destroy them? Those sages are wise; They will not deny their books; They cannot deny this; Thou must consent to it; Thou hast nothing to say against it; Where art thou now? On *Gods* side, or on *Baals*? for *Christ*, or for *Mammon*? For *Righteousness*, or *Unrighteousness*? Wouldest thou but have every one have his Own? Doest thou not covet thy neighbours goods? Wilt thou own the power of as much Religion as in one verse of one Chapter of the whole Bible; Render therefore to every man his due, *Rom.* 13.7? Keep to this, I desire no more: I know I have gained with thy honesty, thy sure vote for tythes, and for ever hereafter; Hold to this Concession, and be constant, thou wilt never hold up an angry hand nor finger against them, or but for them, unless thou change thy minde to petition against the petition. Thou wilt not I suppose be wiser then the Law, mangle the Royall Grant, or deform that Petition of Parliament: If thou do, 1. Thou art unjust, because not impartial: 2. Inconstant, because even now thou chosest to submit Hereto, and madest use of it: 3. In plain terms little better then a fool! Bear

with my plainneſs, thou wilt rather thank me for it, when thou ſhalt ſee I intend not Reviling, or Reproach, but neceſſary home caution and admonition. Reſolve with thy ſelf, There is none ſo highly ſuch, and dangerouſly too, as he that thinks himſelf wiſer then the Law: Which is, as a Lord Chief Juſtice ſaid, *Summa Ratio*, the ſtrength and Quinteſſence of Humane reaſon applied to the common good; and what muſt He needs be then that goes on the contrary part? that undervalues it? that oppoſes it? that cenſures it? and inſtead of obeying the Oracle, quarrels with it? Laws are made to be reverenced, not diſputed of, obeyed, not judged, ſubmitted to, not cenſured by every forward man, ſcarce by every Congregation of men, ſcarce by knowing, wiſe men: and who is he then that of his own private head dares buſily controul and cenſure? abrogate and revoke, repeal and eſtabliſh the whole or a part, (as much as ſeems good unto him, be it what it will) of a Wiſe Parliaments Petition, a dead Kings Conceſſion, the Statute Law, the Canon Law, the Common Law, that whole body that hath ruled all actions and poſſeſſions here? Thinking, ſuch a part may be changed, another ſpared; The great Charter was well thought on in ſome things; The Petition of Right was part as it ſhould; K. *Edwards* old aged and reverenced Laws, that had ſo many requeſts made for them, ſo many bloudy battails fought about them, and were wreſted by the people into the Coronation Oath, may now be adviſed of: I ſee a way, not ſpyed by any ſince Chriſtianity came hither (and yet they had the voice of the Spirit, in the Word of the Goſpel) of Civil Juſtice and Righteouſneſs, I will make Laws, change Ordinances, reverſe Rights, new-mould properties and dominions, &c. though all that is be troubled, &c. and the Petition for every mans right ſhall not hinder: What arrogance is this? What intolerable preſumption? Does it become a private man! a ſingle man! a ſimple man! Any man! Were not obedience better then this ſacrifice? To be ruled by the Law, better then thus to quarrell about it? Say but this one thing, Every man ſhall have his own: and I have obtained my end, and wiſh all unſaid hath (to thy offence or otherwiſe,)

not

not tended hereto. Say but Right ſhall be done as is deſired, (*Soit droit fait come eſt deſire*, as the King:) I will not be wiſer then the Law but follow it: I will not judge the Rule, but be ruled by it; 'tis the bleſſed Ordinance of God, whereto I ought conform, and muſt, and will, ingenuouſly, and fully, the whole and every part, and then we are met and friends. Eſpecially the Petition of Right, let no one be defrauded of his part of that, No One, and then be the iſſue that God will give.

CHAP. XXVIII.

AND now it may be time to look forward, but firſt a glance or two backward, that we may not loſe our ſelves, to ſee the way we have already gone. I hope it is either made evident, or at leaſt much hath been ſaid for it, that Tythes are Civilly, Politically due; They are ſo, for they have been given; they are ſo, becauſe that gift hath been confirmed: comfirmed by the common Law (in its Cradle:) confirmed with the confirmation of King *Edwards* Law, confirmed by the Church Law, of Authority ſufficient, and now laſtly by the glances of the State. But by-blowes I confeſſe theſe laſt, yet as they have been ſet on, I hope reaching home, till of late ſome were direct in *Henry* 8. and *Edward* 6. time, (yet of force;) and ſo is alſo the Petition of Right, it being taken they were before a Right. Deſcend we now from publicke to private, and ſee what the Sages have ſaid, who are either Law, or after next to Law. The Romans had their *Reſponſa Prudentum* taken into the Digeſts which although they were at firſt but the iſſue of private thinkings, given by ſingle men upon occaſion in deciſion, yet with time they got credit, and being found uſefull, and meetly well agreeable with reaſon (the great Standard even of Rules,) They were at laſt taken into the Rule, and ur-

ged as the twelve Tables, or the *Senatusconsulta*, of original and ruling Authority for themselves: So and by the same degrees have some mens credits and sayings been advanced with us, whose *ipse dixit* is next to Oracle, and their private voice so highly advanced as to be for Authority and Rule next to the Publick of the Kingdom. We shall not be long nor curious in this search; for still the Publick speaks lowder to Credit then any Private; and why should we care much for Silver, when we had plenty of Gold before? or look after even the Judges, when their Masters stood ready, yea the Rule of the Judges Masters in publick Agreements subservient to justifie our Assertion and undertaking?

And Lord chief Justice *Cook* is here first, (for we will now take leave to proceed *ordine retrogrado* according to licence reserved) He is now become almost a good Authour; but because his opinion and practise are both in fresh memory with many both as to Pleading, Councel, and Judgement, the less would therefore be said of him, because known in 2. of his *Instit.* alone he so comments on four ancient Statutes, *sc.* (1) *Circumspectè agatis*, (2) *Articuli Cleri*, (3) the 18 *Ed.* 3.7. touching the *Scire facias* from the Chancery, and that (4) of 2 *Edw.*6.13. that none that knows the occasion can well forecast any doubt of the event; none that considers the Text can much doubt of his Comments, unless he will make so crosse and absurd interpretation of his likely meaning, as that he chose his *Theme* to go against the *Suppositum*, or meant to *darken* and *contradict* what was taken in hand to *expound* and *illustrate*: such were *Commenta* indeed rather then *Commentaries*, strange inventions: but He raised his Doctrine according to his Text, and prosecuted it punctually, as he had raised it. Let them heed him well who alleadge him frequently, accounting him Authority in one part as well as another, or else the World will account them I know what, Partial, I mean; That All, and that's true enough, That they do but in stead of representing his sense fully as they finde it, pervert it, picking a Posie perhaps of the sowrest flowers, and leaving out what is not to their advantage, or to their disadvantage, insinuate, that is not, which perhaps they would not have. Sure he

(1) pa.489,490.
(2) pa 610, 611, 612,619.
(3) pag.619,&c.
(4) pag 648,&c.

he thought, ſpake, wrote, and judged, that Tythes are civilly due, when he ſhunned not to declare they were every where due, (1) *Jure divino*. To omit his own References to his Reports. Be Sir *Thomas Smith* next, a Doctour of both Laws and a principal Stateſman; His Deſcription of *Englands* Republick paſſes with good credit, in the laſt Chapter whereof he deſcribes the Court Chriſtian, acknowledges its juriſdiction, ſends matter of Tythes thither as a part of the Work, and if once he had them there, he knew, being not onely νομικὸς, but νομοδιδασκαλος, what even to Mint and Cummin, would become of them. The Authour of the Dialogue between the Doctour and Student is (2) ſaid to have been Mr. *St German*. It was wrote in *Henry* 8. days, not toward the end, and for the ſolidity and depth of it may paſſe for one of the very excellent and ſingularly judicious pieces of that moſt excellent Learning. Now He admits Tythes as conſequentially due upon that account of (3) Eccleſiaſtical Juriſdiction, and this reducibe to the ſecond ground of Law received here, which is, the Law of God, and though the Student cannot afterwards well away with the Doctours *Jure divino*, yet by *Ours*, *Poſitive*, and *here*, he makes no queſtion. For *by the Law of Reaſon* (one of the Grounds he had made of the Law of *England* before) *he would have ſomewhat; for the Labourer is worthy of his hire*, and then *by the Law of the Church*, (This I queſtion not how reaſonably, but thus 'twas ſettled, and the Conſtitution prevailed,) And he gives reaſon for all: For (4) there is no cauſe (he ſayes) why the People of the new Law ought to pay leſſe to the Miniſters of the new Law, then the People of the old Teſtament gave to the Miniſters of the old Teſtament: For the People of the new Law be bound to greater things then the People of the old Law were, as it appeareth, Matth. 5 20. And the ſacrifice of the old Law is not ſo honourable as the ſacrifice of the new Law is; for the ſacrifice of the old Law was onely the figure, and the ſacrifice of the new Law is the thing that was figured; That was the ſhadow, this is the truth. And therefore the Church upon that reaſonable conſideration ordained that the tenth part ſhould be paid for the ſuſtenance of the Miniſters in the

(1) *Report* 2. *fol.* 49 6. *in the Arch. Biſhop of Cant. Caſe, avouched by a* London *Mayſter in his laſt anſwer to a Doubt about the alienation of Tythes*, p. 17. *And in the ſame Report fol.* 45 *in the Arch B. of Winch. Caſe, alledged by* Spelm. de non temerandis Eccleſ. Sect. 16.

(2) *By Dr.* Cowell *in his Interpret. in the word Doctour.*

(3) *Dial.* 1 *cha.* 2. *fo.* 11. *And in the new additions to that Book printed* 1531. *He telli us*; In the Kings Bench & Common place they will ſuffer no iſſue to be joyned, ſpecially between perſon and perſon, where by the Right of the Tythes may be tried, howbeit that in the Exchequer ſometimes they have done otherwiſe. Addit. 5 fol. 14.

(4) Dial. 2 *cha.* 55 *fol.* 165.

new Law, as it was for the ſuſtenance of the Miniſters in the old Law. So howſoever it is *a Due*, and he is there diſcuſſing the equity of the Statute of *Sylva cadua*, which although he defend, yet no more, and in that enough, as before was ſaid, ſpeaking of it. For if there were Aſſertion, that a Prohibition ſhould take place in that particular Caſe, there was implication in others it ſhould not; a by-confirmation, here and there, and in neither can be doubt of what I deſire. Aſcend at next ſtep up as high as *Fleta* and *Bracton*, for we are now among particular fallible men, the Credit of whoſe Vote is not to be compared with the Publick, and therefore we haſten accordingly, yet ſo as we know what ſway theſe bear in Judicature, and that they over-rule the very Rulers and Judges: *Ego verò illos veneror, & tantis nominibus ſemper aſſurgo*; as I believe, after Sir *Edward Cook* moſt of the chief Juſtices have been ready to ſay, and I do unfeinedly. Let *Fleta* be firſt, and He (1) ſpeaking of Contracts and Obligations by them, and an Action of Debt juſtly grounded upon both gives the *Tryall of Tythes* in that Court, will ſurely give *Them*. *Ex hujuſmodi autem obligationibus, promiſſionibus, & ſtipulationibus oritur in curia Regis quædam actio, quæ dicitur Placitum ex debito, eo quod ſpectat ad Coronam Regis*, ſaith he. But except, *Niſi ſint debita à teſtamento vel matrimonio ſuborta: quæ quidem in foro Eccleſiaſtico habent terminari, ſicuti & omnia quæ merè ſunt ſpiritualia*; as Penance for ſin, though pecuniary: So for Church Reparations, &c. 29. *Item ſi Perſona*, (that is, that *living Man*, who as one *ſeen and known*, ſtands forth and acts for the Church, which is alwayes in it ſelf *a dead Corporation*, a *Suppoſitum*, or *Non ens*, without any real ſubſiſtence, and muſt therefore have a ſeen, known, living Executour, whoſe name may be uſed, and being cloathed with Circumſtances under being and exiſtence; *In that name* and under that Perſonality may do ſundry things which otherwiſe conveniently could not; As *give* or *take*, *gain* or *loſe*, *do* or *ſuffer*; *the Churches Man*, we may ſtile him; Rector is another thing (2) implying duty, and ground-

(1) Lib. 2. ca. 60. Sect 27, &c. p. 231.

(2) Laicus igitur præſentat ad Eccleſiam vacantem ut præſentatus Eccleſiam Regat, & Epiſcopus eam dat, ſc. præſentatum admittit ad Regimen, & inſtituit. Bracton. l. 2. c. 23. f. 53.

ed

ed upon ſuppoſition of Power. Now if that *Perſon* or *Churches Man petat à Parochianis ſuis debitas decimas & conſuetas*, (in the very words of the Statute of *Circumſpectè agatis*) *vel ſi Rector agat contra Rectorem de decimis majoribus vel minoribus, dummodo non petatur quarta pars valoris alicujus Eccleſiæ vel decimarum*: (for then, (if alſo the Churches be of ſeverall Patronage, not otherwiſe,) the *Indicavit* takes place, and the Right of Tythes muſt be tried in that of the Advouſon, between the Patrons whoſe Lay *intereſſe* is in queſtion:) And of theſe all, *Sect.* 32. *Hæc autem præcipuè in foro Eccleſiaſtico habent terminari, non obſtante Regia prohibitione.* It ſeems the nature of them was ſuch, that if they were drawn aſide they could not reſt there, but muſt return to their proper chanell, and with other things of the ſame nature have properly and together their diſcuſſion and determination in the Court of Religion: And remember this all along, That, as the Philoſopher ſayes, that which gives the Cauſe (ſufficient) gives the Effect; That which gives the means to compaſſe ſuch an end may be interpreted to allow and give virtually that end will be ſo wrought in and brought about by thoſe means; Even ſo mediately, that which gives the Juriſdiction gives the work, and effect thereof; That which gives the Triall gives that which will come of the Triall, be it what it will; (virtually, and in the ſufficient and neceſſarily producing Cauſe) Which is alſo of uſe in that which follows from the ſame *Fleta* in his Citation of the Statute of *Weſtm.* 2. *cap.* 5. Where approving the Clauſe before of the *Indicavit*, and ruling power thereof, he yet (1) makes the bottom, after diſcuſſion in the Kings, to be the Churches Court; and as that ſhall ſentence ſuch or ſuch a Patron to have right or wrong in the Advouſon of Tythes, ſo after the binding ſentence, though regulated before, muſt be formally given in *Curia Chriſtiana* for them. 9. *In caſu autem quo Rector Eccleſiæ impeditur ad petendas decimas* (ſaith he) *in vicina Parochia per prohibitionem de Indicavit, habeat patronus rectoris ſic impediti breve ad petendam advocationem decimarum, & cum diſrationaverit, procedat poſtea placitum in Curia Chriſtianitatis quatenus diſrationatum fuerit in Curia Regis.* The final ſentence muſt be here, though

(1) Lib. 5. ca. 17. fect. 9. pag. 330.

though the diſcuſſion be elſewhere, as upon a Verdict at the Aſſizes the Judgement *Poſteà* is given at *Weſtminſter*, though the Triall were in the Country. Afterwards, then which nothing is plainer, treating of Exceptions to Pleas, among the

(1) Lib 6. ca. 36. Sect. 7. pag. 428.

firſt is the Court (1) *Erit igitur à digniori incipiendum, ſicut à Juriſdictione judicantis & perſona Judicis, cum ipſe ſit pars principalis Judicii.* And what is that? it follows, (2) *Cum autem diverſi ſint Judices, æſtimare debet quilibet an ſua ſit Juriſdictio, ne falcem ponat in meſſem alienam. Index autem ſecularis de rebus ſpiritualibus cognoſcere non debet.* (The greateſt reaſon in the world) *Decimæ autem in quantum decimæ, & res teſtatæ in poſſeſſione teſtatoris tempore obitus ſui exiſtentis, &c. in foro eccleſiaſtico debent intentari.* In a near caſe indeed, not: as if the Tythes have been once ſold, for then *Per venditionem jam tranſlata eſt ſpiritualitas in temporalitatem, & quo caſu locum habebit Regia prohibitio ad inhibendum judicibus eccleſiaſticis ne in cognitionem hujuſmodi catallorum procedant, &c.* If ſold, they change nature, and by conſequent Triall: and much there follows of ſuch prohibition and permiſſion,

(2) Cap. 37. Sect. 3. p. 429.

(3) Before p. 202.

but of Tythes as Tythes nothing but as before. From (3) *Bracton* (to come to him next) four of five places were given before for permiſſion of Juriſdiction decimal hither, which have all their uſe here; to which may be added this one, (for thoſe I repeat Nor, but remit to them) which ſpeaks thus. If a Clerk wrong another of Tythes, a Prohibition ſhall not lay ('tis in the Treatiſe of granting Prohibitions,) becauſe there is no wrong to the Patron in his Lay fee, which is his Advouſon; (4) *Sect. 6. Item locum non habebit prohibitio de recenti ſpoliatione, ut ſi clericus clericum ſpoliaverit de decimis vel aliis de quibus cognitio pertinet ad forum eccleſiaſticum, quia de hujuſmodi reſtitutione non generatur præjudicium patronis, quantum ad jus advocationis.* And this granting the ſcene of Triall is ſtill upon the matter a granting of all: the ſending for Triall to where before it is known what will be there ſaid, a virtual approbation and confirmation of what ſhall be there done; As he that refers to the Admiral Court does, upon the matter like and approve the Civil Law ſo far forth there ruling: And our ſtate having many Rules *de pactis*, but few *de legatis*, or of

(4) Bracton. l. 5. tract. de except. ca. 10. fo. 408.

Wills

Wills themſelves, ſending, in its Own want, to Another place, and willing the Rules of the Canoniſt or Civilian ſhall take place, does interpretatively ſpeak further, That what is there done and decreed is juſt, and by it ſelf approved; Even ſo the party grieved appealing to the Temporal Court, making his Caſe known there, Praying relief which is denied, His tenth fliece or ſheaf are like to be taken away, and upon Complaint, nor Parliament, nor Common Law afford him any comfort, but their Miniſters or Conſultations and Reſolutions ſend him back to where the taking away ſhall be allowed; What is this but mediately, remotely, and implicitly, but fully to approve of what is there done? For they are preſumed willing to do juſtice, and known able, but not interpoſing, do conſent and partake in the deciſion they order to, be it where and whatſoever. So that it is no vain ſuggeſtion ſo often repeated, and neceſſary to be always underſtood, that the making good the Juriſdiction is the ſecuring all, for all comes along with it, as *Mahomets Alcoran* will bring a long Tenths with it to Religion and for Conſcience in way to his Paradiſe, (but no Wine upon earth) and as the entertaining the Jews Law includes Circumciſion, Paſsover, Pentecoſt, the Sabbath too, and even Decimals. And ſo have been the proceedings with us, That Court, and thoſe diſcuſſions have uſed to bring in Tythes effectually, and not but ever; Ask either the Lawyers or Owners, they who did judge or were judged, They both found the tranſpoſition of Wealth and Riches to be accordingly: Prohibitions if they were often granted, were ſeldom asked, and always denied, but if according to theſe Rlues: The Judge was *Lex loquens*, the ſpeaking Oracle, and nor did, nor would oppoſe, or ſpeak or do otherwiſe: & to their coſt always men found it to be moſt true. In the Manuſcript before mentioned, with *Magna Charta*, and the other old Statutes, are alſo the Writ of *Indicavit*, and many other ſuch Prohibitions grounded upon the ſame Reaſons that are alleadged in the Regiſter, and leading to the ſame end, *ſc.* of with-drawing Lay-inquiries from the Court Chriſtian, the ſubject matter whereof is moſtly Tythes, which ſhews they permitted in other Caſes the Triall to go, where it would, and certainly did carry them. In the uſuall

Regiſters are inhibitions enough compoſed ſo, that none of them will vary any thing; they are (1) Briefs, and give the Brief of the thing in triall: In the Book of Entries The Declaration ſets forth great Complaints for ſuing in the Court Chriſtian for tythes of Oakes under the Title of *Sylva cædua* to the diſturbance of the King, *&c.* but meddles no further, *fol* 225. & *f.* 489. Reſtraints there are enough for ſuing for (2) Annuities becauſe they were *De catallis & debitis quæ non ſunt de teſtamento vel matrimonio, &c. in læſionem coronæ & dignitatis noſtræ*: but Tythes are ſpared, not a word of them. So far (3) Debts, alleadging this reaſon, and under this danger, *Machinans nos & coronam noſtram exhæredare, & cognitionem quæ ad curiam noſtram pertinet ad aliud examen in curia Chriſtianitatis trahere*: ſo for defamation, ſo for demanding Tythes of Lands diſcharged. But not elſe: ſo for recovery of Tythes (4) ſet out, and become Lay Chattels, yet ſo as in All ſtill, no pretence was to impede the Juriſdiction of known due Tythes; but if the Court were extravagant, and would meddle with what was Lay, then clog it with a prohibition that it might not exceed its bounds; otherwiſe let it go on and proceed freely and fully without any manner of diſturbance. And this I ſay, hath been the known way of proceeding; view their Books, ask the Lawyers themſelves, they will allow (though they may finde ſome fault in my expreſſion) the reality of things, and that what I aim at is right, though I may faulter in the way of expreſſion: Nor is any thing more certain then the Reſtraint of their Reſtraints, the Prohibiting of their Prohibitions, that they ſhould not ſtep forth to hinder the Court Spiritual in that was ſuch, or belonged thereto, the certain Conſequent whereof was a known Recovery, and tranſlation of one fliece, ſheaf, lamb, or thing whatſoever of ten, from one man to another. This was a little extravagant, but I providently forecaſt, and conditioned not to be tyed too ſtrictly to Rules of Method though of mine own making: Too much exactneſs may be as incommodious, as altogether looſe. This belongs to what I was upon, the Juriſdiction of Tythes, and thereby right: and to the reflections of the Temporal State, as it ſtood ſeparate, and favouring glances (of which ſort onely

(1) Et dicitur ideò B. eve quærem de qua agitur, & intentionem petentis paucis verbis breviter enarrat. Bract. de Act. on ca. 12. Sect. 2.

(2) Fol. 483.

(3) Fol. 438.

(4) Fol. 489.

is all in this Cell we may properly look for) and these, though not alleadging one quarter of that is, seem to make good what was undertaken abundantly.

CHAP. XXIX.

AND this of the first branch of Donation, made out by many subsequent confirmations, before, under, by, and since the beginning of the Common Law, as well before the Conquerour, as since under these four heads of, 1. The Confirmation of K. *Edwards* Laws, (wherof these were a part:) 2. The Church Decrees, (authorising the King, licensing the State, looking on and approving all the other power that was:) 3. The Acts of Parliament, such as looked this way out of their direct way from the great Charter to the Petition of Right, *inclusivè*:) 4. The Learned Expositors, taken for Oracles of Law particular, as *Cook*, *Fleta*, *Bracton*, &c. Adding some hint of proceedings accordingly, and especially asserting throughout the Ecclesiastical Jurisdiction for them, which will alone induce and make good all the rest. All which together has been so much, and the Roots of this Right so far shewed and evidenced to be spread hereby, that few mens estates I beleeve can hardly shew, or colour for the like, and yet the men possess and enjoy what they have in peace and firm security: for through all the good old Laws of the Land these roots are hereby manifest to have been dispersed, and as it were through every part and member of our English State and Corporation; Fees, Socages, and Serjeanties are but of yesterday, the Children of Power rather then Right at first, and take their utmost date on this side the battle of *Sangnelac*, besides age and to us unusefulness, affording other infirming considerations enough; Mannours and Fee-farms of not much greater reason and equity; and both Copy and Free-hold chiefly

grounded on (as they are come to us, & understood to be possessed) the *Word* of the Law: But these were voluntary Concessions of the highest powers, in their solemnest meetings, long since, upon so reasonable consideration, as to establish the doctrine of the Bible, (and so they yet stand to beare it up like the pillars that supported *Solomons* Ivory Throne,) Behither and beyond the Conquering day have held up strong and fast in despite of all storms that have been since our Nation believed the Bible, (whether to decay with it time will shew,) and if the reasonable and continued, willing and authorising powers of the Nation, all of them, could by their pactions (the surest ground) create a Right, Here it must be *Sure and Firm*, such as the like is scarce to be found again in our Community. All could not have been deceived, nor force in every thing 'tis very like mis-placed: Laws, Canons, Acts, Ordinances, Decrees, Statutes, could so many effectual, and in other cases sufficiently made Rules of Right be here made, and yet not made, and yet have born rule with obeyed power? If Civill Right be stood upon, could All so Many operative and continuing causes thereof have wrought from time to time kindly and vigorously without any effect, or but *Must* contribute and do what humane Pactions and Concessions could, or any thing below the footstool of Gods Throne? The *Divine Right*, I confess is of another sort, more awful, it separates clearly to *an higher kinde*, and we look upon it as (more venerable,) *founded in God*, and partaking therewith of his constancy as well as holiness, must be always without shadow of change *the Same*, Nor can be touched upon rudely with profane hands without a *Relative violation* of that Majesty above from whence it proceeds: (And Therefore men should be very wary how they affixe this seal *of Heaven* to every *Imagination of their Own*, stamping the Character of Divine Right upon disputable opinions, entituling God thereby to their perswasions, perhaps errours of fancies, and but what they strongly conceive must be Thus of equall authority with Divine Oracles: Highest presumption!) But speak of *Humane Right*, what

what has its firmneſs whence all lower titles and incloſures have, the *agreeing Acts of Men*, and *Mutual Humane Stipulation*; Of this ſort I believe we ſhall ſeldome finde any thing better grounded or faſter ſettled then This, (And if ſeconding and conſpiring rules of common equity can contribute any thing to the backing and ſtrengthening of what is ſo placed and ſettled, theſe not wanting neither) and by as good title as any men have any thing with us, our tribe of *Levi* has here in *England* the ſame to the Inheritance of *Iſrael*. Equall in this too, that 'tis *as good as the beſt*, and if we had any better or higher, this would no doubt come out with *the higheſt*: But we have none; Our Tribes pretend not to a partition from Heaven; nor Dominion, or Property, Lordſhips, Mannours, or Honours to any thong to be cut out by but inferiour, lower, inconſtant rules of *arbitrary good Will and Pleaſure*, guided *by compact and Humane Wiſdome*; And therefore *Levi* hath no reaſon to take it amiſs if in this he be not preferred above his Brethren to a right of another ſort (if it ſhould prove ſo) and higher ſtrain having a touch of ſacred and extraordinary, ſealed from Heaven; But rather bleſs his God if he have done full out ſo much for him, as for others, (and as he did anciently heretofore among his own people,) giving him an *Equall Higheſt Claim and Right with the Beſt*, and as *near Divine* as any of his Nation. Which is both done and cleared certainly, and ſhould ſerve his turn ſufficiently and abundantly.

CAP.

CHAP. XXX.

NOW proceed next to other helping ſupports amongſt men, firm enough in other caſes to create Right, if theſe hitherto ſhould fall ſhort of reaching that aime, though of their nature they ſeem not ſo well and aptly proportioned to ſo good an end, *and they are Poſſeſſion, and Preſcription.* Againſt which many things have been ſaid by many, chiefly this, That they ſeem but a kinde of neceſſary Politick devices for *advantageous peace* and as it were *Quiet injury*; ſettling many a man in that he hath really and truly no juſt title to, and by conſequent wedging *Him* out neceſſarily upon whom that right was devolved, or in whom it is inherent: Which yet notwithſtanding, and all that can be ſaid againſt them, they doe paſs, and are allowed, and a man is thought rightly to poſſeſs and enjoy what by ſo, and no other means is come unto him or ſeated and ſettled with him. For though it may ſeem moſt reaſonably *Mine*, (and is,) which another makes over unto me, or which fals to me by inheritance from another, or is eſcheat, (that is, reverſed) or purchaſed, or given, &c. wherein by the contrivances of the Law, and reaſonable devices of honeſt wiſdome, that title which was really and truly exiſtent in another is conveighed over unto me and veſted in me, and ſo I have, as 'twere by removal, *His right*; yet when I ſhall have and enjoy any thing upon this naked preſumption, That *it is Mine, becauſe I Have it*; or, *I ought, Becauſe Long I have Had it*; Theſe as they are with cautions and limitations ſerved in, do not onely put an end to many differences, and to more advantage then what

what has more of ſtrict right in it; But having Law on their ſide, do no doubt bring along a true Right with them, and I may, by reaſon of that Law, (the foundation of All right,) have, enjoy, poſſeſs, defend and keep againſt all men, what is but *ſo ſettled upon me*, upon theſe and no other pretenſions.

The firſt of which, the ſecond ground in all of the Civill Right of Tythes, is Poſſeſſion: a good plea in other caſes, and ſo not to be deſpiſed here, which Others hold forth as ſufficient, and One may as well as another, affording this argument not eaſie to be anſwered or evaded; Tythes are belonging to our Tribe of *Levi*, *Becauſe they have them*; They are Theirs, *For they are theirs*; They poſſeſs them, *Therefore they have right unto them.* For it prevails, (as ſaid,) in Other caſes, why may it not alſo Here? Other Men defend themſelves with no other ſhield, being in, againſt invaſion, or recovery; therefore may theſe: And if having his little loaf in his hand made up of few grains, Gods Miniſter account it *his Own* by Poſſeſſion meerly, why may he not as well as his neighbour, who holds nine times as big upon this title often and by no other, and yet will not part with it?

Placet definitio Aſſiſ. Galli, Poſſeſſio eſt uſus rei, ſi modò uſum accipias pro detentione, ſive ut in his libris ſcriptum eſt duobus locis, detentatione, non pro eo quod græci χρῆσιν dicunt, ab uſu enim hujuſmodi poſſeſſio plurimùm diſtat. Paratit. ad F. de adquir. vel amittend. poſſeſſione. Vid. etiam paratit. ad Cod. lib 7. tit. 32.

But for underſtanding theſe things the better, and therewith ſome other, As of Donation before, it may be no leſs expedient to premiſe here ſundry things alſo of Poſſeſſion in general; The nature of it, the force it hath, the equity thereof, and ſundry other ſuch things, that ſo the generall doctrine may a little ſtrengthen that particular we are to inſiſt on.

Poſſeſſion then, ſaith *Cujacius* out of the Roman *Gallus*, *is the uſe of a thing, if ſo be we take uſe for the onely holding and detaining it, not for the enjoying and uſing which are different and ſomewhat farther.* I underſtand by it that we call *Having*; as Things *Corporall* by taking them in our hands, *Incorporeall* by making uſe of them upon occaſion; which when we ſo Have and Handle the one, or make Uſe of the other, we may be ſaid to *have, hold, detain, occupy, or poſſeſſe them.* Which ſuch having and poſ-

ſeſſing

seſſing (to note ſo much by the way, and in the very entrance) that it hath been here of and belonging to the Miniſters of ſacred things, as before, and to others in their right, is I ſuppoſe doubtfull to none but he that is ready alſo to doubt, Whether there have been Harveſts? Whether the Sun have ſhined? Whether the four Seaſons of the Year have had their viciſſitudes? or the *Bleſſings of God* been reaped *by Men* who have in gratitude *returned to Himſelf* ſome of the fruits of *his own bounty?* I except onely thoſe who are to be excepted, and they are who claim effectuall exemptions; As thoſe that ſucceed the Templars, Hoſpitallers, or *Ciſtertians*: that inherit a Cuſtom for a *Modus decimandi*, or (1) *De non decimando*, (if in Corners this hath with us perhaps prevailed anywhere,) and ſome ſuch other: But for the general, 'tis known the uſe hath been of as wide extent to *ſet aſide One*, as to *carry home Nine*, as diffuſed as to plow, ſow, reap, and feed, And *tanquam de jure Communi*, as was wont to be put into the Libel for recovery, Commonly prevailing all over the Kingdome. The Lord of a Manor hath not more uſually taken up his quit-rent once a year, and thereby ſecured his Right Perpetuall, nor the Landlord his Farmours rent, nor the Merchant his debt, then the Lords Miniſter theſe Dues for his heavenly work, (and he hath not been wont to *require them of Courteſie*, but *take them as Due*,) or ſomebody elſe in his right, and this wall over and everywhere without delay, diſpute, or denial. Which *Poſtulatum* was need to be not proved, but called to remembrance: And this done, proceeding to poſſeſſion it ſelf, the Great force it has in the world, and by conſequent may here, is not hardly diſcernable from the heeded truth of theſe following *Poſitions* or *Obſervations*:

(1) *Our Books ſay, A man may preſcribe in* modo decimandi, *but not in* non decimando. Hobart. in Slades *caſe*, pa. 297.

1. That it gives Right.
2. Was the firſt Natural Right.
3. Is a very Right, able to endure examination.
4. Defending it ſelf againſt all comers.
5. Even againſt the true owner, ſometimes, (*ſcil.* at laſt.)

6. Againſt

6. Againſt whomſoever at any time that hath but equall Right.
7. Againſt all the world ſtill till it be evicted.
8. And enables a man to keep what he could never have gotten.

This force it has, and it ſeems a great force; The ſimple aſſertion was firſt, *It gives Right*, And it does ſo: for in ſome caſes a thing is Mine, from or for no other reaſon, but becauſe *I Have it*. If another Had it, it were *His*, (as now 'tis Mine,) But becauſe I have it, it is *Mine*, and *not His*; and it is injury and wrong to deprive Me of it. (1) This Book, That Field, This Garment, or Sword, or Diamond, my Hand gives it me, I have right to it in Conſcience, becauſe I have it; and as any other thing is another mans by his plea whatſoever, ſo theſe Mine by bare Poſſeſſion. Which chiefly prevails in vacuity of title: for then, *Quod nullius eſt, id jure naturali occupanti concreditur*, ſays (2) *Gaius*, That is No ones and comes in my way, *ſeems naturally to come home to Me*; as Beaſts, that are wilde, Fiſh, Fowl, &c. which if I can take, no one will doubt my right to Own them. Nor skils it much (3) where: for though I might have been hindred coming into another mans Field, what yet I take there is for my ſelf, I might have been keep out, not from my fortune, The wrong was in the intruſion, not in what I have gotten. But then I muſt fully have it: For (4) if I wound, ano-

(1) Iure naturali primævo antequam eſſent jura civilia, id eſt, leges, fuit ſtatutum, ut quamcunque terram calcaverit pes tuus tua ſit. Gloſſ. quia naturaliter, ad F. lib. 1. tit. de adquirend. vel amittend. poſſeſſ.

(2) F. de adquirerum Dominio, L. 3. Singulorum autem hominum res multis modis fiunt; quarundam enim rerum dominium nanciſcimur jure naturali, &c. *And of the Overall ſuch naturall ways of procuring one is by poſſeſſion.* Inſtitut. lib. 2. tit. 1. ſect. 11, 12. Iure autem gentium ſive naturali dominia rerum acquiruntur multis modis: Imprimis per occupationem eorum quæ non ſunt in bonis alicujus. *Bracton lib. 2. cap. 1. ſect. 2. & vid. Flet. li. 3. cap. 2. ſect. 1.*

(3) Nec intereſt feras beſtias & volucres, utrum quis in fundo ſuo capiat, an in alieno Planè, qui in alienum fundum ingreditur venandi aut aucupandi gratiâ, poteſt à Domino ſi is prævideriit prohiberi ne ingrediatur. Quicquid autem eorum cœperis, eouque tuum eſſe intelligitur, donec tua cuſtodia coercetur. Cùm verò tuam evaſerit cuſtodiam, & in libertatem naturalem ſeſe receperit, tuum eſſe deſinit & rurſus occupantis fit. *Inſtit Vbi Supra.*

(4) Illud quæſitum eſt, an fera beſtia quæ ita vulnerata ſit, ut cœpi poſſit, ſtatim noſtra eſſe intelligatur. Trebatio placuit ſtatim noſtram eſſe, & eouſque noſtram videri, donec eam perſequamur. Quod ſi deſierimus eam perſequi, deſinere noſtram eſſe: & rurſus fieri occupantis. Itaque ſi per hoc tempus quo eam perſequimur, alius eam cœperit eo animo, ut ipſe lucrifaceret, furtum videri eum nobis commiſiſſe Plerique putaverunt non aliter eam noſtram eſſe, quàm ſi eam cœperimus, quia multa accidere poſſunt, ut eam non capiamus, quod verius eſt. F. de adquirendo rerum dominio. L. 3 *Sect. 1. Vid. Inſtit. Vbi Sup. & Bracton & Flet.*

ther take, *He that poſſeſſes* muſt onely have the benefit *of Poſſeſſion:* and ſo I muſt *keep*, elſe I have loſt what I had got. So in the wars, (1) the ſpoils of an Enemies Camp are Mine, ſo much thereof as I can lay hold of: Thoſe Captives *à Capiendo*, or (2) *Mancipia eò quod ab hoſtibus manu capiuntur*, becauſe they are touched to Property; *Servi* alſo (*à* (3) *ſervando*, *non à ſerviendo*, from being kept, not made ſlaves of,) are all reduced within the compaſs or reſtraint of Property, to bee diſpoſed of as the New Owner pleaſes; But ſo long as they are *kept* again; for if they break out and return again to their former liberty, they are now again their Owne as before, and not His whoſe they were, who hath loſt that whereby he had them. Theſe things may (4) have ſome ſpeciall way of ordering with us; but then generally they prevail Thus abroad, and with Us too in ſome and moſt caſes; Nor want we inſtances of Right of Land ſo gained meerly by vertue and power of occupancy. For although all were originally in the Crown, if out, derived from it, and ſo upon extinguiſhment of the derivative title, as Eſcheat ſhould have naturally reverted to whence it came, yet in ſome caſes and by ſome circumſtances it proves not ſo, but a title may be (5) gainable and tenable by Entry as they call it, and a man Have and have Right to Land meerly *by Poſſeſſing it.*

(1) Item ea quæ ex hoſtibus capimus, jure gentium ſtatim noſtra fiunt: adeò quidem, ut & liberi homines in ſervitutem noſtram deducantur: Qui tamen ſi evaſerint noſtram poteſtatem, & ad ſuos reverſi fuerint, priſtinum ſtatum recipiunt. *Inſtit. eod. ſect* 17. *Our* Bracton *and* Fleta *have alſo the ſame.* Habet etiam locum iſta ſpecies occupationis in iis quæ ab hoſtibus capiuntur, &c

Item quæ ex animantibus domino noſtro ſubjectis nata ſunt, eodem Iure noſtra ſunt: Idem etiam in inſulis in mari natis, & in ſimilibus, & in rebus pro derelicto habitis, niſi conſuetudo, &c. Bracton ib. *And elſewhere:* Poſſeſſio aliquando jus parit, & pro poſſeſſione præſumitur de Iure, *Id. lib.* 4. *tract* 1 *cap.* 2. *ſect.* 7. *fol.* 160.

(2) Inſtit. de Iure perſonarum, ſect 3. ſervi. lib. 1. tit. 4. & F. de ſtatu hominum, lib. 4.

(3) Servorum appellatio ab eo fluxit, quod imperatores noſtri captivos vendere, ac per hoc ſervare, nec occidere ſolent. F. de verborum ſignif. l. 239. & vid. Inſtit & Digeſt. in locis citatis.

(4) *See* Bracton *and* Fleta *in the places cited before.*

(5) *Chancellour* Bacon *gives an Inſtance, Where an eſtate is granted to one Man for the life of Another, and the firſt dye without diſpoſing his Right, Nor Heir, nor Executor, nor Reverſioner can have it, So it is he that layes hold of it. Vſe of the Law*, pag. 24. *See the example at large.*

2. I ſaid moreover, Poſſeſſion is the firſt and naturall title: Nothing is more Naturally *Mine* then what I do lay hold

hold of. *Juſtinian* (1) taught me ſo, and *Thence* yet, *What we take is our Own*, as hee has from *Labeo*. *Ecce effectus poſſeſſionis*, the (2) Gloſs there bids us mark it, and it is remarkable: For even beaſts, we ſee, will rarely exclude the Poſſeſſour: They have onely the Law of Nature, they skill no compacts or force of agreement, yet they obſerve (whence but from natural impreſſion?) for a kinde of right by Having; whence though their ravin be greedily ſet, we ſhall finde they ceaſe to purſue what they ſee another has got.

(1) Poſſeſſio appellata eſt, ut & Labeo ait, à ſedibus quaſi poſitio: quia naturaliter tenetur ab eo qui ei inſiſtit: quam Græci κατοχὴν dicunt. . Dominiúmque rerum ex naturali poſſeſſione cœpiſſe Nerva filius ait: cujuſque rei veſtigium remanere in his, quæ terra, mari, cœloque capiuntur. Nam hæc protinus eorum fiunt, qui primi poſſeſſionem eorum adquiſierint, F. de adquir. vel amittend. poſſeſſ. in princ.

(2) Gleſſ. Dominium. ibid.

3. Yet more: this title is firm and ſolid and will endure *the touch* of Examination. 'Tis not a fraud or diſſeiſin, which are wrongs, and have their known remedies, but a very Right which the Law looks upon and approves, and more then permits, juſtifies and protects the poſſeſſor. If the other are once ſearched and found, they are loſt, but this how much the more it is examined and known; is ſo much the more approved and juſtified.

4. Againſt all but the true owner at firſt, though the bottome of the claim be no better then in ſome regard an unjuſt entry. The words of the Law are ſuch: **Hee** (3) **that hath poſſeſſion of Land though by diſſeiſin, hath right againſt all men but he that hath right.** Chancellor *Bacon* (4) addeth alſo, that whether he outed any one of his quiet poſſeſſion, who is properly a Diſſeiſor, Or ſtepped in after a Poſſeſſors death before his heir, who is an Abator; In each of theſe caſes whether Diſſeiſor or Abator poſſeſſing and dying poſſeſſed, *His heir hath gained the right to the poſſeſſion of the Land againſt him that hath right, till he recover it by fit action at the Common Law. And if it be not ſued for within ſixty years after the diſſeiſin or abatement committed, the Right Owner hath loſt his right by that negligence.* If either of theſe, the Abator or Diſſeiſor, be excluded by a third invader, Is not now

(3) Doct. & Stud. Dial. 1. ca 9. f. 19.

(4) *Uſe of the Law*, p. 25.

this third perſon, a ſecond Diſſeiſor, his title good againſt thoſe before, who were no better indeed then Uſurpers? *Anſw. No:* For to the two former the Poſſeſſion gave, beſides the preſent *Having*, ſuch a *Right* that againſt All but the right owner it gives title to be as ground ſtill left to recover upon again: and it ſhall not be excepted againſt ſuch a man, He had no right, the thing was never His; For he Had, it Was, and He is to the ſecond Diſſeiſor an Owner and may out him, as having by his former poſſeſſion, not ſo Good, an Equall, but a Better and Prevailing title: And this in favour of poſſeſſion, which to all but the rightful Owner, gives true title, and may not be evaded or rejected. The queſtion is put by (1) *Bracton* under this Head, *Who may grant a Writ of Aſſiſe?* (the known remedy of a poſſeſſion, not an uſurpation,) and upon Anſwer, That None ſave he that is poſſeſſed in his own right, no Guardian, no Fermour, no Servant, &c. Hee replies, *But whether then a Diſſeiſor diſſeiſed?* It ſhould ſeem not, for he had no title in his own right; indeed None? Yes; though not againſt the owner, againſt all elſe, and ſo is truly diſpoſſeſſed, and of his right, and may have his remedy as of a diſſeiſin: and this *propter commodum poſſeſſoris*, (or as *Fleta*, *propter commodum poſſeſſionis*,) and there is no exception againſt his wrongful title. Indeed ſuch a one ſhould not recover againſt the rightful poſſeſſour upon even terms, for he wanted ground to fight on, compared and conteſting with him, and ſo things muſt remaine as they are: But when neither has true right, the poſſeſſion (comparatively among themſelves) ſhall create a right with the firſt to keep as his own, or recover being out, *Et Hoc propter commodum poſſidendi*, onely for Having. (2) *Fleta* has the ſame, and the (3) former again, *Cum neuter Jus habet, melior eſt cauſa poſſidentis:* and (4) many other ſuch things which I forbear to tranſcribe. All which and many ſuch other do together ſo much favor & ſtrengthen his right, who *Hath*, that if I am In any thing (onely In) and all the world againſt me but One Man, (*ſc.* Hee in whom is the True right) yet I ſhall defend my ſelf againſt them All, nor can

(1) Tract. de Aſſiſa nova diſſeiſin. cap 7. ſect 2. fol. 165.

(2) Lib. 4. cap 2. ſect 5. pa. 217.

(3) Bracton Tra. ſup. ca. 2. ſect. 8. fol. 161.

(4) Vid. lib. 2. ca. 22. ſect. 1. fo. 52.

can be justly outed by any, but shall *for Possessions sake* and Because I am in, *sit fast*, (or if I am thrown out, *Recover*,) and this *by Law*, which may be bottome, good, and justifiable enough for me to rest upon, because it settles all things.

5. Moreover, against that one man, the true owner too in time; for (1) *if the Abator or Disseisor (so as the Disseisor hath quiet possession five years next after the disseisin,) do continue their possession and dye seised, and the Land descend to his heir, They have gained the right to the possession of the Land against him that hath right, till he recover it by fit action reall at the Common Law. And if it be not sued for at the Common Law within sixty years after the disseisin, or abatement committed, the right owner hath lost his right by this negligence.* (For, (2) *Currit tempus contra desides & Juris sui contemptores*, as is elsewhere:) *And if a bastard possesse quietly, and dye so, his Children shall hold against the lawful Children and their issue.* This still in favour of possession: and (3) *Bracton* agrees thereto, that long, peaceable, and continuall possession locks the rightful Owner quite out: for there must be a time to end strife, and he has lost his time of regaining.

(1) *They are the words of the most Learned Chancellour* Bacon *in the place before.*

(2) Flet. lib. 2 cr. 60 sect 7 p. 129.

(3) —Longa enim possessio (sicut Ius) parit Ius possidendi, & tollit actionem vero domino petenti, quandoque unam, quandoque aliam, quandoque omnem, quia omnes actiones in mundo infra certa tempora habent limitationem, de acquirend. rerum dom. fol. 52.

6. Yet farther: Where many titles are equall The Possessours is Therefore Best; and if the scales hang even, the Advantage of Being in shall sway the Right also to that side where is the Possession; Not onely the Having but the Right: For it must be always a better title must evict that which is, as if I have footing any where, it must be a strength whose *Greater power* shall out me, and take possession of my room. Hence the (4) Canonist: *In pari delicto vel causa potior est conditio possidentis:* In equality of state the possessours is the better. And the (5) Civilian: *In pari causa possessor potior haberi debet:* much to the same. And

(4) Reg. Iur. Canon. 65.

(5) F. de diversis Regalis Iuris antiqui, l. 170. Dum quæritur de damno, & par utriusque causa sit, (*one must lose,*) quare non potior sit qui tenet, quam qui persequitur? de verborum obligat. L. Si servum Stichium. Sect. Sequitur.

when

when with us one contended for a Wardſhip, and one poſſeſſed, upon equal Right neither ſhould have been outed, and then He was well enough was in, He kept what he had. For, (1) *Non ſufficit quòd petentes probent ſe jus habere, omnes, vel quidam eorum, ad hoc quod auferatur poſſeſſio à tenente, niſi ſit qui probet ſe majus jus habere: Paritas enim juris non aufert ſeyſinam a tenente, propter commodum poſſidendi, & privilegium poſſeſſionis.* A ſtronger weight muſt be to fetch up the Scale when a Poſſeſſion is ſettled any way: a parity or equality of Right leaves the thing onely where it was. Again, if an Action be begun onely upon pretence of (2) Baſtardy, and the Defendant put in his Recrimination; The other is what he Accuſes; This Plaintiff muſt both prove *his own legitimation*, or elſe all is well again, and ſhall continue as it is, and which is more, is Therefore well *Becauſe it ſo is*, unleſs there be a greater ſtrength of Reaſon to alter and remove. For the Law ſtill favours that which is *in Being*, which ſhall not be altered *for equally good*, or unleſs *for clearly better*; as an Army of ten thouſand upon equal Advantages in Nature is able to ſtand upon the defenſive againſt a far greater number, a like force is not like to remove it. Farther; What muſt be done if a man ſell his Right to two men, or a pretender his coloured ſhew of Right for Right, Who ſhall then obtain? The (3) Rule is given:

Rem Domino vel non Domino vendente duobus,
In jure eſt potior venditione prior.

The firſt Buyer had firſt Right, and ſhall carry it: agreeable enough to that of (4) *Ulpian* in the Civil Law. Nay, ſometimes this carries a victory where there is no faſt ground to fight on, and maintains the field ſtoutly, having onely this to ſay, *I am there.* 'Tis in the caſe where he that has no Title, ſues againſt him that has but as much, and in poſſeſſion, where can ſcarce be compariſon, neither having any thing, and yet the Poſſeſſour Thereby has enough to carry All. (5) *Quia cùm neuter jus habeat, melior eſt conditio poſſidentis.*

(1) Bracton l. 2. cap. 38. Sect. 5. f. 90.

(2) Id lib. de Exception. ca. 19. Sect. 6. f. 418. Et ſi uterque Baſtardus fuerit, tam petens quàm tenens, & petens Baſtardiam objecerit tenenti, ſi tenens replicando dixerit petentem eſſe Baſtardum, oportet petentem ſe docere legitimum; alioquin nihil capiat, cum melior ſit in hoc caſu conditio poſſidentis, &c ib. Sect. 3. *And ſee alſo before the very end of the Book* de Aſſiſa mort. Antecеſſ. *Agreeable with* Flet. lib. 6. ca. 39. Sect. 7. p. 433.

(3) Bracton l. 2. c. 18. Sect. 2. f. 41. Flet. li. 3. cap. 15. Sect. 8. p. 202.

(4) *If a man ſell to two perſons, who ſhall enjoy?* Julianus libro ſeptimo digeſtorum ſcripſit, ut ſi quidem ab eodem non domino emerint, potior ſit cui priori res tradita eſt; quòd ſi à diverſis non dominis, melior cauſa poſſidentis ſit, quam petentis, quæ ſententia vera eſt. F. de Publiciana in rem l. 9 Sive autem Sect. Si duobus. Et cum de lucro duorum quæratur, melior eſt conditio poſſidentis; de diverſis reg. Jur. l. 168. Sect. 2.

(5) Bracton fol. 162.

And

And no marvell again then, if the (1) Emperour observed so much Contention to be for Possession, as that would sometimes winde in all the rest, and carry the whole business. These are the favours of Possession when in a double claim the measure of Right is on both sides equal; which seems to be grounded upon that repeated, and so much varied Axiome both of the Canonist and Civilian, or rather upon that reason upon which they both are founded, *In favour of Peace, to keep that in being, that is.* For if quarrelling men should be hearkened to in every motion, and but upon equal terms be heard with no disadvantage to him that begins the Fray, little would soon be left quiet among men; our nature is so peevish or weak, and many or most herein so very natural, that Contentions would multiply beyond either doubt of reason or hope of end, if there were not some publick devices and honest discouragements invented to choke and stifle them at the very beginning; whence prudently he that first stirs is onely assured of disadvantage to begin upon; the uneven Ground must give him so much the worst at first, that if his Plea be *no better then his Antagonists*, it is in *no sort good.* If his *Antagonists* be but *as* (2) *good as his*, it shall be *better.* For, *In* (3) *paritate Juris prior admittitur defensor quàm pars actrix:* In equality of Right none shall be dispossessed of that he has. And (4) *Favorabiliores Rei potius quam Actores habentur.* If there must any favour be shewed, it shall be to the Accused: and if the Judges (5) cannot agree or be equally divided, He that is impeached shall be quit, though he be guilty; for if the Scales hang even, of proof and (6) probability, 'tis presumed for him that *Has* innocence: still and in all looking as it were with an *evil eye* upon those that move complaints, and in favourable supposition of *that well that is*; Hanging back with might and main from alteration upon *equall* strength ((7) *In re communi potior est conditio prohibentis*, both must agree to stirr, or the thing stands) and One shall never draw forward so powerfully to alter and change, that which is, as another with equal strength shall hold back to stay things where they be, because *Melior est conditio possidentis*; if both be, or seem good, the Possessors title is thereby best.

(1) Et quia longè commodius est possidere, quàm petere: ideò plerunque & ferè semper ingens existit contentio de ipsa possessione. Commodum autem possidenti in eo est, quod etiamsi ejus res non sit qui possidet; si modò actor non poterit suam esse probare, remanet in suo loco possessio; propter quam causam, cùm obscura sunt utriusq; jura, contra petitorem judicari solet: *Instit. lib. 4. tit. 15. sect 4. ver Retinendæ.*

(2) Cum par delictum est duorum, semper oneratur petitor, & melior habetur possessoris causa. *F. de diversis reg. Iur l. 196.*

(3) *Fleta lib 2. cap 63 sect. 11. pag 137.*

(4) *F. de diversis regulis, l. 167.*

(5) *De re judicata. l. 38. Inter pares.*

(6) Cum sunt partium Iura obscura, Reo favendum est potius quam Actori: *Iur. Canon. Reg 11.*

(7) *Reg. Iur Can. 56.*

beſt. Peeviſh malice is apt to cheriſh melancholick Dreams of black Diſtempers every where, but the ſerenity of clear and firm wiſedom is always mixed with that goodneſs that thinks moſt things well. That deforms all for amiſs, that (looking on with an evil eye) it ſees not well. This charitably inclines to believe well of all it findes not evidently ill: whence with averſation to change as little alteration is made as may be without apparent wrong. That muſt be *not ſo good but better and truer* which is promiſed, and he that is in poſſeſſion of (1) wealth or innocence, unleſs there be greater ſtrength to aſſail and remove then is to defend, let him keep faſt and ſure without any moleſtation in his preſent poſſeſſion. But go on;

(1) In eo quod vel is qui petit, vel is a quo petitur, lucrifacturus eſt, durior cauſa eſt petitoris. F. de diverſis reg. Iur. antiqu. l. 33.

7. I ſaid further, The Plea of Poſſeſſion is againſt all the World everlaſtingly good till it be legally and orderly evert-ed. So ſaid (2) one in this very Caſe of Tythes not long ſince, honeſtly, judiciouſly, truly and very prudently: nor is it but fit it ſhould be ſo: for if a man might be preſumed wrong in, at any time he might be caſt out: if one, then another: if by one, then by another: and ſo no one from any one could be ſafe at any time, or any thing conſtant, ſettled ever; no remedy therefore but all be judged right that is, and till orderly proceeding do caſt out of doors, a man be preſumed juſtly in his own home where he is. 'Tis one thing to have a Benefice void in Law, another thing but voidable, ſayes the Canoniſt; the murtherer is not to be hanged preſently, though he deſerve death, and muſt die, and though I am in condition and may be caſt out of my houſe, till by order I am ſo I ought to be ſafe and faſt there. Do not (3) Equity and Reaſon, the Law of Nature, God and Man, All favour that in being till orderly deciſion of judgement be given againſt it? ſaid he, whom ſome count next to an Oracle; and *Præſumptionibus ſtandum eſt, donec probetur in contrarium*; Things are to be thought well, till the contrary appear; and where any thing is under the God of order, 'tis a fair likelihood it ſhould be there, and we are reaſonably and piouſly to believe it ſo, till new light ſhew it clear to the contrary. But one word more, and it is, That Poſſeſſion ſhall in ſundry Caſes help a man *to keep* what by equal ſtrength of title he ſhould never have been able *to*

(2) A London Miniſter in his Reſolution of a Doubt, printed with Sir Henry Spelman of Tythes. p. 19.

(3) Hooker *in his Preface.* Sect. 6.

get,

get. If he were out he ſhould never make way to get in, but being in he ſits faſt, and out no man ſhall ever be able to put him. For in many Caſes (1) there lies Exception (a ward to defend, where there lay no Action, (or effectual means to aſſail) A man may have power to keep another out, that could never (there) himſelf have got in; defend that Caſtle he could not take, and bolt his Adverſary out by help within effectually, where himſelf could never get in, if he were out, nor can be put out. Therefore, becauſe he is in The (2) Father of our Law ſpeaks to this purpoſe: *Item, & eſt alia ratio, quòd qui rem petere voluerit, ſi cautè ſibi proviserit, videat primo an aliqua ratione nanciſci poſſit poſſeſſionem: quoniam commodius eſt poſſidere, quàm petere. Multi enim ſunt qui ſi poſſeſſionem habuerint, ſe defendere poterunt per exceptionem: Si autem fuerint extra, vix aut nunquam ferè recuperabunt per actionem.* And theſe are the benefits, priviledges, and advantages of Poſſeſſion, (no marvel if before obſerved) the reaſonable object of great ambition; for it gives Right, the moſt natural, of proof, againſt all but one, and him at laſt. It ſwayes the Scale in an equality, is ſafe and juſt, till it be evicted, and keeps a man whether he could never have been advanced. Which if all it ſeem unreaſonable on the Poſſeſſours part, as giving advantage to the rich partially and ſettling men by Law in that they have no right to, as like ſometimes it does;

(1) Frequens enim eſt apud Iuriſconſultos aliquem eſſe tutum exceptione, qui non ſit ipſo Iure. Io. Calvin. Lexic. Iuriſp p. 731.

(2) Bracton. l. de Action. c. 12. Sect. 4, f. 113.

Obiect.

Sure, we ſay, firſt, the Law is never unreaſonable, but the defect is on our part, who do not apprehend that Reaſon is: the Well is deep, and we want to draw of plenty.

Anſw.

2. And for the unreaſonableneſs here, it is without cauſe imagined. For it may be conſidered, and muſt be granted, 1. That the Stage is open, what is or is done in the World cannot but be known. 2. Men love their own. 3. Are apt to make out for it. 4. Have means to come by it. 5. In the honeſteſt, ſureſt, and beſt ways that could yet be found of Law. 6. Whether in Poſſeſſion or Action what is not found amiſs, is reaſonably to be judged well. Now theſe things preſumed and known, and withall it being ſeen, ſuch a one Has; how unlikely is it but that he ſhould and ought to Have, elſe we ſhould not ſee him Have? or if the right were in another, the Poſſeſſion, which

he cannot but love, must bee with him? If there were no Courts, or presumed Partiall, or men negligent, or the whole frame of things composed toward injustice, to make or let things alone ill, or not well, Then might we doubt reasonably, and against the Possessour cherish vehement suspition: but nothing being more evident then the above mentioned & to be granted assurances leading directly to the contrary, How can we but judge for what Is? and that the Law is reasonable favouring the Possessour as it does; (*Præsumptionibus standum est donec probetur in contrarium*, as before:) and that he hath right, for if he had not, as things are, hee should not have? I will not deny but some hard measure may be hereby meted out to sometimes, or perhaps wrong, But this in some degree may well be allowed the Soveraigne Authour of All our right: Better this then worse, (as worse would be if this were not,) and sith of two this way is the best, reasonably is it chosen though it be not in all regards so good as it might be.

This of Possession in general, and our loved Law about it, (as in every thing else, so here very amiable, and as hee said of truth, *Si oculis cerneretur humanis admirabiles excitaret amores.*) But now some one may ask, what is this to our argument? That was *of Tythes*: How are They advantaged hereby? I answer, with the Apostle, πολὺ κατὰ πάντα τρόπον; *Much, Every way*. Be it first resumed, that They are Possessed: It is not more known that men have Harvested, Or plowne, or sowne, or their Garners been made ful and plenteous with all manner of store; but with equall certainty and evidence this advances it selfe in the face of the world, and he is scarce acquainted out of his owne Parish, nor in his own Parish in *England*, to whom this is not known by evidence certain and notorious. This then laid in to the former, I infer: What hath been said of possession, what can be more said of it, hath it not All force here? Doth *it* give *right*, *right alone*, *full and natural right*, the *most natural*, the Law looking on, approving and consenting, and shall it have no operation here? Shall the Churches case be singular, & the Ministers of Jesus Christ have no benefit of common axioms

Rom. 3. 2.

axioms, no fruit of those are to all other fruitful operations? Shall they have no favour by that All have favour, no benefit by that All have benefit, the Having their Own in their own hands? and shall that helps others many ways, advantage them no ways? Shall men look upon securing enriching Possession, shall wise men look upon it? Shall the quintessence of wisdome in most reverenced Laws, and those diffused all abroad have consideration of it? Nay, shall that little measure of knowledge imparted to tame Beasts, inable them to espy the good, and prompt them to observe the Law and order of it? And shall onely in one case the poor Servant of God, that secludes himself from all the world to wait on his Lord in the Temple, nor for his own sake, nor for his Masters sake partake of the common benefit of the Sun-beams as it were, that shine cheap to all others to their comfort and benefit? To keep him in that he has, to preserve him from injury and spoil, to secure his dear Owne, to render him but so much regard from his fellow as one brute creature gives another, which will not lightly snatch the prey ravenously out of his fellows mouth, yet more unreasonable men will! Will they? (and plot to undo those that dare but *mutire contra?*) take away, or keep away I say, from their Brother, Neighbour, fellow-Christian-subject, and Gods Minister his rightfull possession! without regret! without mercy! casting him out of the vineyard, and as good as slaying him! for to strip is next to starve, and that worse then to kill;) not dreading to act over again the mighty mans part against poor *Naboth*, who had but a little, yet he must not keep that; He that has nine for one already, must have his Tenth also to make elbowroom for his pleasure, or content, perhaps for his Riot and Sensuality. Can this look like good, Christian, or well-pleasing in the sight of God or man! Is any unrighteousnesse, and this not unrighteousnesse! Is any thing unequall, and this not unequall! Is any thing with impious rude and uncivil, and is not this of the worst sort of impiety joyned with incivility and barbarous cruelty! Every man claims his Property, Every one owns his Own, and shall not Ones? Must he alone be excepted? Every one has benefit by it, comfort from it, with expectation (well enough a-

greeing) of joy in the world to come; Shall one sort onely be pent up to fast or feast himself with his spiritual apprehensions, comforting no higher then with the expectation of the world to come, denyed his own bread here in a Land flowing with milk and honey, to all other the joy of all Lands? If there be no due, I say nothing: If there be, I could say no less: *There is something of Justice due to Truth, and the seriousnesse of things sometimes calleth for sober vehemency.* The Law is every ones birth-right: The Husbandmans, the Labourers, the Tradesmans, the Beggars: *Soli ex omnibus Clerico commune jus clauditur!* as spake S. (1) *Ambrose* upon like occasion, shall they alone that wait on the King of Heaven, have no benefit by Imperial Constitutions! The tenderly regarded Church was wont, and even by judgement of the Law, to be compared to a (2) Pupil, (under age and subject to wrong) As much religious Charity or demonstration of true Christian piety to be helpful to her weakness, as to relieve a fatherless childe, wherein (3) S. *James* placeth the power of *that Religion that is Pure:* Are things so much changed? No, they remain the same: Or, are wise mens pious thoughts so much altered, their Pure Religion corrupted, themselves set upon Pelf and *Mammon*, yea, spoil and wrong not declined for conscience sake, that they dare invade anothers, Religion instructs or permits them to take from Religion, strip this Orphan-Church, withdraw from her Ministers, force from their hands, and extort and wrench their very meat out of their mouths, I mean in their rightfull dues, held back, grudged, or squeezed from them by fraud or force? Must not Gods bright honour be darkned, if his Lights goe out? Must they not goe out, if the oile be taken from the Lamp? Can it bee there put without the Levites help? and how can they attend to do it, if that which the Laws of God and man have settled upon them to live on, (in equality of strength for right with all other Tribes) be surreptitiously or violently taken or withheld from them (for He may starve me as well that gives me not my allowance of meat being appointed so to do, as he that takes it away from me,) and they have no benefit of Law, no not of that whereof all the world hath benefit, and by Law, *I may keep mine Own that*

(1) Ambros. li. 2. Epist. 12. tom. 5. pa. 98.

(2) *See before*, pa. 61. *in the margin.*

(3) *Pure Religion and undefiled before God, is, to visit the fatherless and widow, &c.* chap. 1. ult.

I have in Poſſeſſion. Heed every ſyllable of which propoſition, ſtriking in with the intereſt in common of every One man in this Nation; and if it be a very ſmall thing now that Poſſeſſion may not be ſtood upon by ſome, but they turned out of theirs, or it be queſtioned whether it may be withholden, who knows how long it may be ere others —— &c. But I forbear. I ominate no ill, I wiſh nothing but good, I pray they may enjoy their Own who grudge, or quarrell, or want but leave to withhold other mens; Onely I fear that Circular Curſe which hath (1) uſed to come about, which alſo I invert into a hearty prayer: Let not, O Lord, the Extortioner conſume all that They have (2), Nor the ſtranger ſpoil their Labor. *Hoc avertat Deus.* Μὴ γένοιτο. *Abſit. Amen, Amen.*

(1) *For it is* Ἔνδειγμα τῆς δικαίας κρίσεως: *a demonſtration of Heavens Juſtice, or a ſign or example of it thus to do:* ἀνταπο-δοῦναι, *to return Affliction to the Afflicter, or One for Another,* 2 Theſſ. 1. 5.

(2) Pſal. 109. 10.

Object. But here comes a great Objection to be anſwered, *How the Churches Perſon or Man, in the ſenſe before, can be ſaid to be poſſeſſed of theſe things, ſith they are known to be in anothers, the Husbandmans poſſeſſion? He plows, and ſows, and looks to, and Has: Much good do it you, ſaith he then, with your part, ſith I have nine and the Tenth:* As was jeſtingly put upon the Sophiſter, who when he had with much ſubtilty of Syllogiſme proved two egges three, was bid take the third for his ſupper. *Anſ.* Nay, not ſo neither: Here is more reality, a poſſeſſion (or *quaſi* poſſeſſion) of theſe things, beyond fancy or ſpeculation: Not of the things indeed ſtrictly, but of the (3) Liberty and Right to take them up, and that is poſſeſſed continually, even when the things themſelves are not: As a Lord is poſſeſſed of a Quit-rent ſeven years together, and yet he receives it but once a yeare, his right is inherent when the power is not uſed: Or, as a man poſſeſſes a way over ſuch a ground, not by the Land it ſelf, but by the leave, he may when he will, and will when he liſts, and that liſt comes as often as there is occaſion, Thus to make uſe of the Land for his Service. For underſtanding which things the better, we muſt have recourſe to a known diſtinction, even in Law, or a ſeparation or ſorting out poſſeſſions into two kindes, of Rights, and Things; Corporeal, and Incorporeall. The one (Corporeal) are poſſeſſed but by graſping, or claſping the Things, as in our hands, &c. The other Incor-

(3) Is qui actionem habet ad rem recuperandam ipſam rem habere videtur. F. de diverſ. regulis. l. 15.

Incorporeall (the Rights) are enjoyed, even in the use, or having used, and so continually enjoyed, even when the use it self (the fruit) is not. As the Patron of an Advowson in gross, 1. Has never the Glebe, nor Church, nor Tythes, nor any thing seen: 2. Nor has (it may be) presented these 20 years past, or for these 20 years to come may not, yet still all this while he hath ever a Right to present, (if (1) ever he presented, or had right, which right is *lieger dormant* with him continually, till he draw his power into act, as he does when is occasion, reaping some fruit of that right which was though seldome used, inherent continually: Even so the occasionall Receiver of Tythes, it may be once a year, or whensoever, has still *Jus ad rem*, that is, to the taking them up when they shall be, which is the fruit, Though not *Jus in re*, the continuall actuall perception of them: In short he is possessed fully and clearly of a right to them all the year, but he reaps the fruit of this power onely in the fruits of Harvest. Much is said of these things both among our Lawyers and the Civilians; But this may clear the thing, how the proprietary hath continuall possession of his right in the interception of use of his power, and yet always leave and power to use it when there is occasion. And this also may prevent another doubt wil arise anon about Prescription, which is always founded in possession and more, even a continuance, and how can this be in the interruption of taking up these dues but seldome and as is occasion? Yes: This may be well enough: for *without Interruption, Ever*, there is a *perpetual right* of taking them up when they shall arise: a continuance of claim though the things arise not to be claimed.

(1) Vid. Bract. lib. 2. cap. 23. sect. 3, 4. & Flet. l. 3. cap. 15. sect. 16.

Object.

Answ.

Reply.

But it may be replyed to both, These things are corporal, visible, *quæ tangi possunt*, within reach of All the senses; And how throng we them up then into that notional airy speculation of a right in the clouds; Such Things should be Possessed actually, or they are not within the Claim of Possession. For a (2) Triplication to which reply, Yes; so they may

Solut.

(2) *The redouble upon that is given in answer to an answer: a term familiar in Law.* Ad replicationem vero sequitur triplicatio, & ad triplicationem quadruplicatio (*one rejoynder farther*) ex causa, &c. Bracton de Except. cap. 1. sect. 4. fo. 400. & vid. fol. 428. & fol. 242. Replicatio est, &c. & contra replicationem datur triplicatio Reo, & iterum quadriplicatio petenti. Flet. lib. 6. cap. 36. sect. 10. pa. 428.

indeed;

indeed; The *Things may be ſeen*, but *their Right is inviſible*: as a Church may be ſeen, the Glebe is tangible, but the Right of Advocation thereto is, what? Ask, who ever (1) had it in his hand, or can tell who ſaw it, or where it is. The (2) Emperour has fully ſatisfied this point; Let patience bear with a little more length then ordinary in tranſcription, becauſe it tends to illighten all before: *Quædam præterea res corporales ſunt*, (ſaith he) *quædam incorporales. 1. Corporales hæ ſunt quæ ſui natura tangi poſſunt: veluti fundus, homo, veſtis, aurum, &c. 2. Incorporales autem ſunt, quæ tangi non poſſunt: qualia ſunt ea quæ in jure conſiſtunt: ſicut hereditas, uſusfructus, uſus, & obligationes quoquo modo contractæ. Nec ad rem pertinet quod in hereditate res corporales continentur. Nam & fructus qui ex fundo percipiuntur corporales ſunt, & id quod ex aliqua obligatione nobis debetur, plerunque corporale eſt; veluti fundus, homo, pecunia. Nam ipſum jus hereditatis, & ipſum jus utendi fruendi, & ipſum jus obligationis incorporale eſt. 3. Eodem numero ſunt jura prædiorum urbanorum, & ruſticorum quæ etiam ſervitutes vocantur.* And the ſame is alſo the nature of this Right; Though *the Things* themſelves admit poſſeſſion as *viſible, tangible*, yet the *Title to them* is *in nubibus*; *a conceit*, or *ſuppoſition* of the Law, without any ſenſible exiſtence; And we may not argue from *a Thing* to a *Title*, from *Land* to *an Inheritance*; for they come under ſeverall conceits of the minde, and muſt be cloathed with ſeveral expreſſions, and though they are *about the ſame thing*, yet they are *not The Same* thing, nor admit the ſame words and conſiderations. So that it remains then, Tythes may be truly poſſeſſed, even when they are not, that is, A right to them againſt they are or ſhall be; That *quaſi poſſeſſio* is enough to go along with the meaſure of time in even paces to be a ground of Preſcription by that continuance; and though the things themſelves may be ſeen and poſſeſſed Corporally, yet the Right cannot, nor is expected ſhould. Be ſure of this; That if the Lord of a Mannour, or that higher of an Honour, a Patron of his Advocation, or Copy or Free-holder have right or poſſeſſion of any thing they have, the Corporation of Publick Sacred Miniſters

(1) Quamvis Eccleſia ſecundū quod conſtituitur lignis & lapidibus, ſit res corporalis, jus tamen præſentandi erit incorporale. Bra. fo 53.

(2) Inſtit. lib. 2. tit. 2. de rebus corporalibus & incorporalibus.

niſters has as certainly poſſeſſion preſent and continuall of Tythes in the ſeverall Truſtees or Perſons, of or for that Corporation, which ſtand forth to Act for it, being a thing otherwiſe onely *in Nubibus* and conſideration of the Law; That Right is veſted in Them while they live; When they die the Law has provided them of a Chain of never failing ſucceſſours to ſupply their mortality; Thus it *has been*, Thus it *is*, Thus it *may be* if Juſtice may be ſuffered to have its courſe, and innocent forms of Juſtice not diſturbed by parcimony and improvident troubleſome folly; and Thus is Religion, and with us the Rule thereof, the Bible provided for and poſſeſſed of (in its publick Miniſters) ſufficient, outward, viſible ſupport to the end of the world. O Chriſtian, if thou be, Think of this one word; What it is *to Wrong the Righteous*, to *diſpoſſeſs innocent poor* Naboth *of the inheritance of his Anceſtors*, to thruſt any Poor man out of his *Own*, or get or Wiſh any helpleſs juſt man out of his Due and lawfull Poſſeſſion! *If thou be ſuch*, think of this, *O Chriſtian!*

CHAP. XXXI.

IT follows, and is fitly joyned to the former, In whoſe name this Poſſeſſion is, which may bring it about that in a ſtrict ſenſe indeed no Man was or is or can be thought to be immediately in poſſeſſion of theſe Rights but *God himſelfe*, and that in the words and thoughts of the Law: (for, I give not mine owne, but onely as the Prieſt heretofore delivered forth the minde of his Oracle:) For, (1) *Is Poſſidet cujus nomine Poſſidetur*, ſays the ſame Oracle again, It is not ſo much *He that is In*, as *He in whoſe right he is in*, is ſtrictly the Poſſeſſour: As in a Tutor compared with his Pupil, or a Servant with his Maſter, &c. And this

(1) Fleta lib 4. cap 2. ſect. 1. Bracton de Aſſiſa nov. diſſeiſin. cap 7. ſect. 1. fol. 165.

this then fitly advances us onward to the additional ſtrength this Pillar of the Support of This Civil Right has *by Anothers intereſſing*, That he that takes them up is never eſtated in them in his Own Right, but the true and farther uttermoſt Poſſeſſion of them is veſted and ſeated elſewhere, terminated *Higher, above in Heaven. Men* are Takers up of *Gods Dues, They* doe receive what (withdrawing his viſible preſence) is His Right, (who ſhould ſure be leaſt deſpoiled or defrauded,) and Perſons they are in the ſenſe before, as to *ſtand forth and act for a Suppoſed Corporation*, So Having *another Perſonality to hold forth*, in being *His receivers*, (who though he be everywhere is yet *to us Inviſible*,) To take up to *His honour* what is Devoted to *His ſervice*, who is the *Soveraign Lord believed of All things*, *JEHOVAH God Almighty*.

This is much believed in the world, and has very much affirmance even in our Civil laws, nor can it (if the thing be thus) but much ſtrengthen and ſettle this pillar of property, whereupon as great ſecurity as Any muſt Needs reſt for Injoyment and Continuance, that *Men ſhall not* be put out *for Gods ſake*, nor from *His right* They be diſturbed, Who receive not *from or for themſelves*, but as *His Deputy-Poſſeſſors and Receivers*; Vicars all by a ſubſtitution from the Higheſt, in whoſe Right taking up what they doe, they are the more bound to diſpenſe in *His* ſervice to *His* honour; And who is he will be ſo bold to turn the *Lords Steward* out of doors, if not for his own, for his Maſters ſake, or diſpoſſeſs *God and Religion*, ſubtract or withhold any thing from the *Eternall Majeſty? Heaven*, 'tis ſaid and believed, intereſſes it ſelf in this caſe, *the Powers above* have laid their *Sacred* hands upon theſe bequeſts and receits; What is ſo ſettled by clear Human Law below, has a *bond of Religion* to tie it on faſter upon *Whoſoever* are the (1) Uſufructuaries; The ſpoil wherof muſt needs be Then not that of *Wrong* but *Worſe*, not of *Robbery* but *Sacriledge*, a *Divine Theft*, the *Robbery of Heaven*, like the *Giants offence*, and of *that Kinde the Eagle* heretofore *committed* for love of her young, Not ſparing to take the ſmoaking fleſh from the Altar, wherewith the Gods ſhould have been propitiated, Bnt there hung thereto

(1) *See Sir* Henry Spelman *of Tythes*, p 139.

a fatal Coal that ſet all on fire, and burnt both her neſt, her ſelf, and young ones. A fearfull conſideration! (if i ſhould be ſo, for ſtill I argue upon ſuppoſition, deliver ing forth the tendries of another, my Oracle muſt bear me out) enough to awaken the deadeſt, and ſtartle the wiſeſt, to amaze the boldeſt, and affright all ſober, and any ways conſiderate, and adviſed men, from laying violent and profane hands upon that God had touched before, or tugging it out by ſtrength in this Caſe, leaſt they be not onely like that deplorable ſort, *Againſt whom God hath a Controverſie, Hoſea* 4.4. *This People is*, (Let them alone,) *as they that ſtrive with the Prieſt*; but worſe, *Shall the Clay exalt it ſelf againſt the Potter? Wo be to him*, *Eſay* 45.9. *that ſtriveth with his Maker.* Into whoſe divine hands the Donations made and following *Ratihibitions* favour, in expreſſion, intent of delivery; That what to Religion, was *rather Devoted*, then *Given*; even to *Gods Great Majeſty*, the *Donee*, *Receiver*, and intended *Detainer*, and *Diſpoſer*, That ſo men might not but give forth *to his Will* what they receive *by his Deputation*, being like to be thereby the better Stewards of thoſe Manifold Gifts of God which they receive upon his account, in his Name, and from his Right, and upon a ſecond conſideration ſhould be the more preciſe in diſpenſing onely to his honour, what for a ſecond reaſon the hand of his providence diſpenſeth unto them to have ſo diſpenſed: and yet farther the reaſon of whoſe proceedings and Juſtice may ſeem in equity to expect that they ſhould not ſpend merely upon themſelves, but uſe *Non quaſi ſuis ſed quaſi commendatis*, what they receive of his bounty, as His, to be ſo, and no otherwiſe but ſo uſed.

But to come to the ſtrength of ſome Particulars; (not dealing onely with the ſupple and pliable affections to mould and frame them, but ſtabliſhing the judgement in the thing averred or ſuppoſed;) That things devoted to Religion are not ſolely and ultimately Mans, but in a further hand; I will not urge the ſayings of Poets, and Oratours, Councels, Schoolmen, and Fathers, though theſe offer themſelves; but the glances of Scripture may be not inconſiderable, at leaſt to prove the poſſibility and elſewhere exiſtence of the thing; to which

which purpose I awake to remembrance: first, the vow of *Jacob*, (1) *Quicquid dederis mihi, ejus Decimam omninò sum daturus Tibi. Whatsoever thou shalt give out to Me, the Tenth I will give back to Thee*: which promise he makes to *his God*. And of Lands, Vows, Oblations, &c. 'Tis said, (2) *Every devoted thing is Holy to the Lord*: particularly (3) these Tythes, *whither of the seed of the land, or fruit of the Trees*, (as we would say, Corn, and Fruit) And accordingly paid in practise, not without intimation of this Consecration and appropriation; (4) They of *Judah and Israel brought in, Decimas armenti & gregis, Decimas sacras, id est, sacratas Jehovæ Deo ipsorum*, as *Tremellius*; *Their Tythes of the flock and of the herd, sacred and devoted to Jehovah their God*. Who complained He was defrauded, even *he himself*, in These? (5) *Will a man rob his God?* (possibly the thing may be done, or else here in vain questioned:) *Yet you have robbed Me*: Wherein? *In these. Ye are cursed with a curse, &c.* And for the Attournment or making them over *to Man* to be received *by him*, for his good Lord and Masters behoof, (6) *Behold, I have given the Children of Levi all the Tenth in Israel*, (They were mine, but I have Given them to Them) ἀντὶ τῶν λειτουργιῶν ὅσα αὐτοὶ λειτουργοῦσι, for their publick work of Ministration, *For the service they serve in the Tabernacle of the Congregation*. All this is in Gods Book to prove the possibility of the thing (and abundance more not found or sought:) But now for what apprehensions Our Laws had of this thing here, which is to the point indeed, The beginning of the great Charter was remembred before; (7) *Concessimus Deo, & hac præsenti Charta confirmavimus*, **We have given to God for us and our heirs, that the Church shall have All her Rights and Immunities.** And a part of the Church Rights were then in Tythes, and Jurisdiction to Command them: (Whereas the Liberties of the Freemen of the Realm were given to Themselves as 'twere into their own hands immediately.) Were those blinde days? Was King *Edward* blinde also? (1) *De omni annona decima garba Deo debita est, & ideò reddenda*, said he, The Tenth due to

(1) Gen. 28 22.
(2) Lev. 27 28.
(3) ib. ver 30.
(4) 2 Chro. 31. 6.
(5) Mal. 3. 8, 9.
(6) Num 18, 21. *and compare* ver. 23. & 26.
(7) Chap. 1.
(8) Leg. Edovar. cap. 8.

God and so to be paid: so preached *Augustine*, and was granted by the King, his Baronage, and People. Not *Augustine* of *Hippo*, but one was more near us, and more to be heeded by us, though (1) that Father spake fully enough and to this poin', to his *Africans*; but I keep my promise and home: Wise, prudent, valiant, successfull, and exceeding pious, King *Alfred* required, (2) Thine Tything portion give thou to God: and (3) in his League with the Danes calls them, *Dei Rectitudines*: and his father before him wrote his Catholick Donation (4) at the Altar, offered it there, as to whom? and not having to do with an Eorl or Earderman, or any upon earth Man-receiver. The Councel at (5) *Enham* called them, *Jura Deo debita*; King *Knout* in his (6) Laws, *Quot annis quisque Deo debita Jura justasque redditiones ritè persolvito*, Let every one pay yearly to God his due Rights: and King (7) *Ethelred* before, *Nemo auferat Deo quod ad Deum pertinet, & prædecessores nostri concesserunt*, Let no man take from God what belongs to God, and which our Ancestours gave. What was in King *Edwards* Law we had but now: which how much the Common Law remember also, and the following confirmations of that Law (as many as were) involving this also: and to omit what might be gathered from our Provincials in *Lindwood*, and the Decrees at large, step at once to *Henry* 8. where (8) the Parliament complains to the King for remedy, that, Numbers of ill-disposed persons having no respect of their Duty to Almighty God, but against Right and good Conscience, did with-hold their Tythes, **Due to God and holy Church**, &c. They were then reputed and in Parliament Language so to belong: and lastly in the commonly reputed common Law, *Bract.* and *Fleta* are not wanting. No one can but account, these things

(1) Nosti quia Dei sunt cuncta quæ percipis, &c. *as the word, were alledged before*, p. 74. *And a little after*, Quid si diceret Deus, Meus est homo quem feci, Mea est terra quam colis, Mea sunt & semina quæ spargis, Mea animalia quæ fatigas, Mei sunt imbres & pluviæ, & ventorum flamina mea sunt. Meus est Solis calor, & cùm omnia Mea sint elementa vivendi, Tu qui manus accommodas, solam decimam meretaris. Sed quia piè nos pascit omnipotens Deus, amplissimam tribuit minus laboranti mercedem, sibi tantum decimam vendicans, nobis omnia condonavit. Ingrate fraudator ac perfide, divina te voce convenio. Ecce annus jam finitus est, redde Domino pluenti mercedem, &c. *In a harvest Serm.* de temp. 210. Tom. 10. p. 370.

(2) Spelm Concil. p. 360.

(3) Id. p. 377.

(4) Id. p. 349.

(5) Id. p. 517. c. 10.

(6) Id. p. 544.

(7) Id, p. 531.

(8) 27 H. 8. c. 20.

things, and even in their account a part of the ſacred Revenue, and then (1) ſayes *Fleta: Extra patrimoniũ ſunt Res ſacræ, &c.* beyond mans Right or reach: neither are they to be tranſpoſed for that reaſon: for (2) no man has them, they are a part of Gods Inventory, ſayes *Bracton*. *They* (3) and *the Glebe* are queſtionleſs as to this all of a nature: their property, uſe, poſſeſſion, intention, devotion, application, and juriſdiction the ſame: and for what *Land* is given, (4) *Videtur & verum eſt, quod primò & principaliter fit Donatio Eccleſiæ, & ſecundariò Rectoribus & perſonis*, ſays the ſame *Bracton*. Which if it be excepted againſt as thrown in with the exploded Abby poſſeſſions, elſew here is ſhewed ſome difference. It is in Caſe of Remedy for recovery of Cathedral, Conuentual, and Parochial Church-lands, by a Writ of *Juris utrum*, whether an Aſſize ſhall lay of the latter as of the two former? and it is (5) ſaid, it ſhall not; For though thoſe Lands were given to them *In liberam eleemoſynam*, yet they were given to Perſons, as well as Churches, who in that regard having leave of remedy, As Other men had, there (6) needed be no ſtepping aſide out of the way upon no occaſion; and the form of the gift may be known by the Charter; but now for him that has Right by his Pariſh Church, it was not ſo, that any thing was ſettled upon his perſon, but onely upon his Corporation, *Et quæ perſona nihil clamare poterit niſi nomine Eccleſiæ ſuæ, quia in Eccleſiis Parochialibus no fit donatio perſonæ ſed Eccleſiæ, ſecundùm quòd perpendi poterit per modum donationis*. This is evident, for what Land is given to a Pariſh Church; the reaſon is the ſame of Tythes, as devoted to beyond this World, and

(1) ſacred

(1) Lib. 3. cap. 1. Sect 3. Res verò ſacræ, relligioſæ, & ſanctæ in nullius bonis ſunt. Quod enim d vini Iuris eſt, id in nullius hominis bonis eſt, imò in bonis Dei hominum cenſu: a. Bracton lib. 1. cap. 12. Sect. 8. f. 8. vid. ff. de rerum diviſione, l. 6. Sect. 2. Inſt. l. 2. tit. 1. Sect. nullius. Sacræ res ſunt quæ ritè per Pontifices Deo conſecratæ ſunt veluti ædes ſacræ, & Donatia, quæ ritè ad Miniſterium Dei dedicata ſunt. Quæ etiam perne ſtram conſtitutionem alienari & obligari prohibuimus, excepta cauſa redemption s captivorum. 16 Sect. ieqq.

(2) Item donari non po erit res quæ poſſideri non poteſt, ſicut res ſacra vel religioſa, vel quaſi, &c. Hujuſmodi verò res ſacræ à nullo dari poſſunt, nec poſſideri; quia in nullius bonis ſunt, id eſt, in bonis alicujus perſonæ ſingularis, ſed tantum in bonis Dei vel bonis ſiſti Bract lib. 2. cap. 5. Sect. 7. f. 14.

(3) *A Rectory or Parſonage is a Spiritual Living, compoſed of Land, Tythe, and other Oblations of the People, ſeparate or dedicate unto God in any Congregation for the ſervice of his Church there, and for the maintenance of the Governour or Miniſter thereof, &c. So three e. ual integral parts, ſc. Glebe, Tythe, &c.* Spelman. de non temerand. Eccl. Sect. 1.

(4) Bracton. lib. 2. cap. 25. Sect. 4. f. 78. So Fleta. l. 3. c. 16. Sect. 13. p. 205.

(5) Bracton in tract. de Aſſiſa utrum. ca. 2. Sect. 8. f. 2 6.

(6) Quod alicui gratioſè conceditur, trahi non debet aliis in exemplum. Reg. Iuris. Can. 74.

(1) sacred, in the same sense that any thing visible is, as separate and laid in in several from the touch of prophane hands, and common vulgar uses, designed and set aside for God and godliness, (ὅσα τέτακται πρὸς τὸν θεὸν, as is (2) *Aristotles* very fit and apt expression,) onely for Heaven. Not for nature or sin, necessity or sensuality, in the serving of which ends most other things spend themselves, but merely to set forth Gods honour in this World, as the Ox or the Lamb brought to the Tabernacle or Temple, or as he reserved many things to himself in the Levitical Law, but the Levites were his Receivers. He was no more visible Then then Now, nor the things invisible and of a different nature, yet to his honour, yea to himself were appointed then, (and he did appoint them) sundry things to be set aside, which his Levites had and he in them. So here. As in implication of some like thing whereto believed and received here, it was spread abroad, and yet remains at the sea coasts, that those followers of *Peter* and the other Apostles who maintain their temporal life by the painfull labour of Fishing, bring the Tenth of their personal gains and lay it down at the publick Minister of sacred things his feet by the name (which they yet retain) of *Christs share*. Why this, but because they intend Him a part of every Draught? As if never a day or night they lay forth with any success but somewhat must be laid aside for Heaven, and of their penury some mites be continually paid in to his Treasury. How? To give them into his Own hands? This is impossible: He is in Heaven beyond the thick clouds, where we nor can offer, nor he receive any thing: But he has *Servants*, and *Service*, and *Ministery*, and *Ministers*, upon earth, to whom he hath said, *He that receiveth you receiveth me*, into what place soever ye enter Take what ye finde, for *the Labourer is worthy of his hire*; For them therefore and their sakes, (3) in His Right these things are

(1) Sir H. Spelman *of Tythes*, chap. 17. *That things offered to God be Holy.*
I must first explain what I mean by Holy, & that is, not that they are divine things, or like those of the Sanctuary, which none might touch save the anointed Priests: But like the Lands, and Possessions of the Levites mentioned in Lev. 27. v. 28. 29. *that were said to be holy and separate from common use, and separate from man, that is, from the injury of Secular persons, and to be onely disposed to and for the service of God,* Defensum & munitum ab injuria hominum. ff. de rerum divis. L. Sanctum, *as the persons of Emperours and Kings are said to be sacred. For as the Altar sanctifieth the Offering,* Matth. 23. 19 *So those things being offered to God, are by this very act of Oblation made holy, and taken so into his own tuition, as they may not be after divorced.* p. 82.

(2) Aristot. Polit. l. 6. c. 8.

(3) *In as much as all the Types of Christ, as a Priest, have received tythes as due, & as types; and in as much as his person and office are eternal, and therefore the annexa; and in as much as he hath no where dispensed with, or densed, or refused, &c and lastly, in as much as he hath left those are his Ambassadours, in his stead: for my part I do not see why unto them in the Name and Right of their Master, those rights should not be due, which were manifestly His in his Types, and of which Himself hath no where in his word declared any revocation,* Raynolds. *on* Ps. 110. 4. p. 474, 175

issued

issued forth and brought in, and accordingly they receive name. If the world were asleep at first when the title was given and prevailed, It hath been awaked at some time since; 'Tis hard to impose on the vulgar, or plant any name or title among them that shall with success spread and grow, unless it fit in with their preconceived notions and apprehensions: It seems this did, whence they entertained it generally and retain it firmly, and by this name they yet express their own mindes of what they give, calling it *Christs share*. Upon which account of somewhat *beyond meerly Human*, and that had a *touch of Divine or toward Heavenly*, These rights became triable, and the doubts of them onely disputable and determinable in that Court, by rule and practise, where few of earthly or meer worldly things were once thought of, and whose natural and first proper essential bound of Jurisdiction was, *Spiritualia & Spiritualibus annexa*. *There* were inquired into things above this world, and which could not be regulated by common rules of Civil Justice, as Articles of Religion, Exercise of Discipline, Ecclesiastical Censures, and generally things being or reputed Sacred: And *Thither Also*, as being of kinde and kin, did *These things* throng in, or rather were both admitted and invited, as Saying by Doing what was, and that they were not reputed meerly of humane consideration, because they were let in and there had regard and only proper tractation or trial where things Divine and most nearly belonging to God had or should have had their due inquiries. If the aim had been only to get in dues, (these Dues,) to determine of Civil property, or to keep one man alive in a Parish, All Civil Courts of Justice were open where All such things had their proper inquiries and resolutions, and the Tenth part needed not to have been separate from the Nine: But it seems somewhat farther was aimed at, and meant or implyed which was the cause why these things were parted, and the face of things seems to represent that there was an apprehension and supposition that it was, because they were thought to draw near the things of God, and were, as far as any, toward *Beyond this World*, and Therefore they were sorted with a scene accordingly, and had their trial and discussion

cussion where the things of Religion and Christianity were inquirable onely, *sc. in the Court-Christian.*

Farther, by onely which kinde of Supposition the crime can be aggravated of taking them away to that heighth it commonly is, and men for purloining be accounted in the number of more then unjust, *Impious* and *Sacrilegious*. For it seems at least unto me that it is not so much the violation of any Command or Law humane or Divine, from earth or above heaven if it were possible, can denominate and specifie this sin, (if that Law were as plain as another Divine Command, *Thou shalt not commit Adultery*, *Thou shalt not Steal*;) But something else and growing in the Nature of the sinne below that must advance the crime so high as to change kinde and become of Wrong and Injustice, Impiety and Sacriledge: To rob Heaven must offer violation to Heaven, and that be more then to offend in transgressing a Law of Heaven. For the Morall Commandements above come thence and are in force for us, and yet No one says Adultery or Theft are Sacriledges: Sins they are, but that their full latitude, the Divine Precept does not new specifie the nature of the offence, These or Any. So heretofore, when *Jus divinum* undoubted had bounded every ones own, The tribes ar least if not the families were parted by sure and immediate Commission from Heaven, yet the unjust invasion of any part even then was not counted, I believe, more then Unjust, (1) Wrong or Injury when any part of the second Table was broken, (whereunto yet the seal of Divine Authority had been affixed in every part,) No more. Even so here, to raise this aggravation, and cause this change by new specification of the nature of this sin from Theft to Sacriledge, seems not to me so properly to grow from any authority of any sort of power and command above, as here below from (2) something in the very heart and nature of the offence, which makes it (3) ἱερουλία, a Sacred Spoliation, not from the Law, but from the Thing: when either *Sacrum de Sacro*, or *Sacrum de non Sacro*, or *non Sacrũ de Sacro* is taken, still hovering Here below, and as the (4) Lawyer speaks, through whose spectacles we are

(1) Qui rapit pecuniam proximi sui, iniquitatem operatur: qui autem pecuniam, vel Res Ecclesiæ abstulerit, Sacrilegium facit. Cau. 17. qu. 4. c. 18.

(2) Porrò à sacris fures Eorum vel violatores propriè sacrilegi dicti. Pet. Gregor. Tholos. Syntagom. lib 33 cap. 14. sect. 8.

(3) ὁ βδελυσσόμενος τὰ εἴδωλα, ἱερουλεῖς; Rom. 2. 22.

(4) Zouch. descript. Iur. Eccles. par. 2. sect. 8. Pet. Gregor. 1. Tholos. ubi supra.

like

like to ſee cleareſt in this caſe. And accordingly the (1) Civilian defined it, *Sacrilegium eſt furtum Rei aut pecuniæ Sacræ ex loco, vel religioſæ ex religioſo:* and they are Sacrilegious, who? (2) *Qui publica Sacra compilavêrunt*, that have medled with ſomewhat Sacred: ſtill relating *to the Thing* from *the Command*; And the word alſo imports that way; for (3) *Sublegere* is *Furari*, ſays *Servius*, *unde & Sacrilegus dicitur qui Sacra legit, id eſt, furatur*, ſo Another. Still dwelling below and converſant about *That Is*, Not *Who ſays:* as we do not read that *Ananias* and *Sapphira* had any order at all to bring, or ſinned againſt any Prohibition in revoking, and yet (with *Achan*) they uſually march, (tranſgreſſing in what had come under divine precept no way,) in the head of the Sacrilegious. We have no ſtrict Command for a Chalice or diverſe other Utenſils of the Church, nor the Church it ſelf, yet few I believe will allow but tranſgreſſions aggravated by being converſant about *theſe* Things are worſe then others, and of (4) extraordinary Guilt in this world. and they are Things. I promiſed not to meddle with any Theological Diſcourſe, Nor do I here, but as it has dependance of and derivation from, yea, neceſſary complication with what was Civil. Our ſuch Laws ſay, That Tythes are Given to God, which I ſay does well infer, their ſurreption ſacriledge, as on the contrary, they that ſay, 'tis ſacriledge to take them, give argument, they think they belong to God, Foraſmuch as not ſo much Gods Command or Divine Right for dueneſs makes this ſin, as ſomething in, below, with the Act it ſelf, and indeed Correlatively they infer or remove one another: for if a thing be bequeathed to Gods hand, (as the Law ſays plainly here,) it cannot but be ſacriledge, *Sacra legere*, to take them (*Holy*) from him; as on the contrary if it be ſacriledge to take them, They that ſay ſo muſt firſt imply and ſuppoſe they were made over and given to God.

(1) Cujacius in parat. ad legem Iul. peculatus.

(2) Tit. eod. L. 9. ſect. 1.

(3) Apud Ioan. Calvin. Lexic. Iur. pa. 814.

(4) Locus facit ut idem vel furtum, vel Sacrilegium ſit, & capite luendum. Claudianus. li. 48. Digeſt. tit. 19. L. 16. ſect 4.

I have in the proſequution of this point omitted what Epithites or Paraphraſing Deſcriptions I finde of them given abroad, where they are ſtyled *Res Dominica*, *Dominica ſubſtantia*, *Patrimonium Chriſti*, *Dos ſponſæ Chriſti*, *Dei cenſus*, and the like, all which muſt needs advance them high,

and joyn them near in with better then *meer worldly things*: *In usum pietatis concessæ*, as is properly said in the (1) Canon, Or, *Decimas Deo dari omnino non negligatur, quas Deus sibi dari constituit, quia timendum est, ut quisquis Deo debitum suum abstrahit, ne fortè Deus per peccatum suum auferat ei necessaria sua*, as in the (2) Councel of *Mentz*: But these are without the Circle of our Own, to which I promised to confine my self. Much less may I take scope to look abroad into the profane world, for their *Oblations*, even *of Tythes*, and *to God*, to whom they vowed and thought they payed. As *Agis* in *Xenophon*, and *Agesilaus* in the same, who both brought their Tythe to *Delphos* to their god, and offered it him; which (3) *Baronius* having remembred, and many more, concludes with, *At verò non immorabor diutiùs in singulis exemplis recensendis: Constat quidem apud omnes ferè gentes, velut quodam jure naturæ exigente, decimas Numini devotas ac redditas*: upon his credit, paid all over the world, and as due to God, not to maintain a man or any sort of men, but *in signum universalis dominii*, in thankful gratitude to the Original Donour of All, of whom they did conceive to have and hold their good Lease, and in acknowledgement of the tenure they brought him back again something. *Fain* (as M. *Hooker* (4) gravely resolves and concludes, and with him I conclude this point also,) *would we teach our selves to believe, that for worldly goods it sufficeth honestly and frugally to use them to our own benefit, without detriment and hurt of others; or if we go a degree farther, and perhaps convert some small contemptible portion thereof to charitable use, the whole duty which herein we owe unto God is fully satisfied. But forasmuch as we cannot rightly honour God, unlesse both our souls and bodies be imployed sometimes meerly in his service; Again, sith we know that Religion requireth at our hands the taking away of so great a part of the time of our lives quite and clean from our own busines, and the bestowing of the same in his; Suppose we that nothing of our wealth and substance is immediatly due to God, but All our own to bestow and spend as our selves think meet? are not our riches as well his, as the days of our lives are his?*

(1) Caus. 16 qu 7 ca 1.

(2) *Cited by* M. Selden Hist. ca 6. sect. 6.

(3) Agis Delphos profectus est ac decimam Deo obtulit. Xenoph. ac rursum: Hostium verò ita fructus agro est, ut duobus annis centum talenta & amplius Deo apud Delphos decimam dedicaret. Id vid. Baron. ad an. Christi, 57 sect. 74. tom. 1. col. 607.

(4) Eccles. Polit. lib 5 sect. 79 pa. 424.

Where-

Wherefore, unleſſe with part we acknowledge his ſupream dominion, by whoſe benevolence we have the whole, how give we Honour to whom Honour belongeth, or how hath God the things that are Gods?

Thus far that grave and judicious man; a piece from whoſe page does more then a little adorn Ours: And ſo now we have ſeen how Tythes have been intended to be ſettled on Heaven: How our Laws ſay, They were ſo: How they have been tryed accordingly, and this alone renders their ſpoliation, ſacriledge; Beſides what elſe abroad to this purpoſe: *Sure then the world has looked upon them as Such: Sure they have been reputed at leaſt as God's.*

It remains for application, How faſt and ſafe they ſhould then be from injury and ſpoil, How inviolably not to bee ſubtracted or touched, as things laid up in Heaven, as what may not be purloined from the foot-ſtool of Gods Throne, (if there they have been depoſited;) And Who is he dares put his hand toward that God has touched before, or lay a finger upon that he has laid his hand, and would, (to ſee himſelf deprived and wronged, or that the wrong ſhould but redound to him, or touch toward him,) ſhew himſelf no doubt an *Angry Jealous God!* Sure, This muſt not a little confirm humane Right when a bond of Religion (or as Religious) ſhall adde what ſtrength it can to that which humane wiſdome by the beſt contrivance of all its devices had made and ſettled before for immoveable; and this we find not in ſome ſcattered looſe ſheets, but the univerſall, all-ruling, all-giving Law making faith for it; after the ſtabliſhing by Civil ſanction, This coming in and ſaying, *Theſe things were given to God, I know it, I ſhould know and do aſſure it: Take my word for it, I have beſt looked upon them, and never took them for any other.* We know, for natural and equitable reaſons as well as Law, No one ſhould be put out of his own: Poſſeſſion bears ſuch a ſway that it ſecures multitudes in their *Heathen* right, nor are they touched or queſtioned but from moſt known injury: And ſhall not Gods Miniſter ſit as ſafe and faſt, and faſter in that not onely the Law gives him as His, but the ſame Law tells him and all the world he is in poſſeſſi-

on of *for the God of all the World? for the King of Heaven?* Ye cannot wrong me, but ye must Rob Him, defraud Religion, disturb an higher title, impoverish the Ministery, disable Gods service, starve and choak, (by diverting those warm showers of bounty had wont to cherish and feed it) the publick practise of Religion at the root, leaving onely a possibility, but never reducible into act, of glorious service, by this that *Ananias* and *Sapphira* have taken what *Others* gave, to maintain the Ministers of that service: Do we account it so hainous a thing, (as Justly we do) to remove the old Land-mark, to curtoll the set rule of Right, or to deprive the good people of the Land of their part in the Great Charter, which as but to a lower hand neither was never delivered farther then their Own Custody: (Item, **We have given to us and our heirs to all the Free-men of the Realm these Liberties following:**) And shall it not strike higher that reacheth to *the injury of Heaven*, touching the *Imprimis concessimus Deo*, that the Church shall have her Rights? Reaching as it were unto *another world*, conveighing up to *Heaven*, and depositing as it were *at the foot-stool of his Throne* the Assurance, making Him the entrusted Feoffee for others use, or rather the absolute and irrevocable Donee, and Proprietour estated and indowed to have Right or Wrong by the men of this world? I will not say the thing is so, fully; I onely propose, what the Law seems to intend; with what an eye that hath looked upon it, or under what form it hath represented it; me thinks in terrible form enough of Conscience to all that believe a Deity, to fright any from medling that considers, (if *it should* be so,) *Decima DEO debita, Dei Rectitudines, Deo debita Jura, In usum pietatis concessa, & Concessimus Deo pro nobis & haeredibus nostris, &c. If this should* NOT *be so?* Some one may say. But say I, *What if it should?* THESE *may be but the workings of fearfull fancies?* But, *What*, say I, *if they be Reall and Solid Truths? They do but terrifie:* But what if they should and ought instruct? As the (1) barefoot Friar heretofore answered the Gallant, who scoffing at his austerity, asked, Why so? *This is not much* quoth the Friar, *to him that thinks there is Hell.*

(1) Cambdeans *Remaines*, p. 350.

Hell. But if there be no Hell replyed the Gallant, what a Fool art thou then? But, if *there Be*, said the other, *Who is then the greater Fool? What if thy sinfull soul be sealed up to unbelief, and thy seared conscience will not render thee dreading the Fire till thou feel it, till thou lye down in it, till thine own experience be the first credible Preacher thou wilt believe, when thou shalt finde thy self laying down in flames, where the worm dieth not, and the fire NEVER goeth out?* Doubtless it is best to cast the Worst; most safe to forecast what May be although it may Not be; the more if it may tend to danger in the worst, and those everlasting inconveniences *and if men be not given over to a reprobate sense, past feeling*, as the Scripture speaks, lulled asleep by the deceitfulness of sin into a dead Lethargy, *the god of this world having so blinded their eyes*, that they have no regard of the next. It cannot be but these considerations must breed a pawse at the least, and with all sober and advised men a deliberation and Doubt whether these things be so, or no? Whose possibilities are assured by the instances of Scripture where they were So: Which men have agreed so all abroad to deliver from the publick voice as it were of the Church and of the world: Which are left inshrined in the sacred monuments of most reverenced and solemn Laws, and unless most things did agree to deceive us, could not but be True. And if so, that there be Possession, yea, sacred, and in the sense given Divine Possession, both Equity and Law, Godliness and Honesty, Religion and Reason, Piety and Justice call out for Every man to have his due, (especially where a party may be more then man) and it can be no less then *Unrighteousness and Impiety both together* to dispossess and deprive of them. We are bound to love our Neighbour as our selves: How do we this, if we wrong him? If we undo him? If we give him cause of grief? Which of us could be contented to be thrust out of our own possessions or inheritances? a part, much worse from the whole? and yet much worse then that if the whole labouring Tribe should be left to uncertainty, and Churches in danger of being vacant? We should love God above All: How shew we this in wronging His Ministers, taking,

Rom. 1 28. Ephes. 4. 19. 2 Cor. 4. 4.

king oile from their His Lamp, and venturing to lay a covetous finger where He is said before to have laid his hand? The prosperity of Religion is, or should be to every good man the *Joy of his heart, the light of his eyes, the comfort of his soul, the life of his life:* how further we this, when we take, (not onely from man, but) from that Religion we pretend to honour, depriving the labourer of his hire for work therein, muzling That Oxe treading out the (1) Corn that he is not able to do his work, and whereas *the offering of the righteous maketh the Altar fat,* we make it lean (by taking away the fat that others gave,) and are resolved once more to tempt the Providence of Heaven, whether it be awake and regard to revenge its own wrong? whether the Gold of *Tholouse* shall prosper in our hands, though it were once spread upon the Altar? or the sacrifice will carry again a fatall coal, which kindled by Heaven, may not have power to be quenched on Earth?

Will a man rob his God? Will he? His own God? Any? saith the Prophet: and will we be instances in ours? Dare we contend with Him that is Great? *are we mightier then He?* Are Gods and Mans rights combined both together? and will not this double strength hold? a double fence protect from violation? *Seneca*'s Epistles would sure teach us more honesty, and the Law of the (2) twelve Tables fright us into better Religion. *The Relation To A Deity* is me thinks such a charme as should not but affright any from medling where it is inscribed, or entring that circle where the dimmest Characters thereof do cirtumscribed appear: Sure he that put in some respect into his (3) Law, *To God As God,* and would have *None violated,* would least of all excuse us if we should profane (*Himself,*) *Our Own.*

(1) 1 Corin. 9.9. 1 Timoth. 5. 18. *or, treading the more: So* Ioseph *has left us that law interpreted, with much probability.* Vid. Iosep. Antiq. l. 4 cap. 8. ὁ φιμώσεις βοῦν ἀλοῶντα: *Thou shalt not muzzle the Treading Oxe.* Deut. 25. 4. *the place the Apostle alledgeth, as* Esai. 42. ἀλοήσεις ὄρη. *Thou shalt trample the Mountains.*

(2) Sacrum Sacrove commendatum qui dempserit rapseritve, parricida esto. L. 12. tabul.

(3) Θεὸς ὐ βλασφολογήσεις. *So the Septuagint reads the Text,* Exod. 22. 28 *interpreted by* Iosseph *of strain Gods:* Antiq. lib. 4. cap. 8. & contra Apion. li. 2, *near the end. And also by* Philo *the Iew.* lib. 1. de Monarch.

CHAP.

CHAP. XXXII.

IN Whose right Man hath been *Long* possessed too: through the continuance of ages and generations: for this is no device of yesterday, like to change to morrow, but such as has already out-lived peace and war, troubles and conquests; yea, the revolutions of all seasons, of winter and summer, health and sickness, corruption and reformation; Nor from the darkest remoteness of any Christian days, does shew of any other maintenace appeare for Gods family but this, which hath bin the subsistence of his workmen all along that have laboured in his harvest, and bin maintained hereby, without which they could not have subsisted nor have laboured. As if Providence had intended by this solitary instance to furnish us with one very good argument for Expedience of continuance, Because the world could yet give example of No other, At least some cause of doubt there Might be and Reason to fear whether Any other would do so well, because none at all had yet been tryed. For many things smile with very much content and pleasing flattering delight upon the nimble working fancies of busie bold undertakers, Who when they have cast and contrived such a thing *should be*; give themselves leave to be perswaded presently *it shall*, and what hath been moulded in their working fancies (commonly attended with weak Judgements) may easily be made out into Existent Realities, for which their quick wits are soon able to afford them arguments enough: But when they shall come to reduce their speculations to practise, and give life to their pregnant and very Happy conceptions (as they think) setting the whole frame of their new and unexperienced devices to move forward upon all those necessary wheeles their fancies had soon made, and now must be made out to keep their Projects a going, Many a doubt starts out *ex improviso*, Many a rub is cast in the way of their smoothest

ſmootheſt and evenneſt moſt probable deſignes, Many an incongruity ariſes to disturb and croſs their promiſing and moſt handſomly and univerſally complying expectations; Many a ſowre and unlooked for oppoſition to make the plot relliſh of Humane, whatſoever hath been the beſt fruit of *Mans contrivance*, accompanied as it is with *manifold Humane infirmities*: Whence ſome wiſe men have declined nothing more then Change, accounting it a good part of their beſt Wiſdome to Vary as little as may be in things of waight, yea to let things quietly and upon deliberation alone with Some inconveniencies if but Tolerably Well, not onely becauſe of the Charge and trouble, but alſo that manifold Uncertainty will always follow Change, (as we are able to make it,) taking *that Is*, though preciſely and purged from all inconveniencies None of the beſt, and venturing with choice and moſt ſatisfaction of reaſonable deſire along in the trodden, though ſomewhat uneven path, becauſe There they can deſcry the feet of Sundry Paſſengers that have Uſed to goe before them. Experience is among the greateſt Securities of Hope; Duely applyed it gives as much toward Aſſurance as almoſt any thing, that What Has been ſhall Be; As on the contrary dark untrodden wayes have Wiſe mens jealouſies always hanging over them, and perillous innovations been by them both ſhunned and feared: Foraſmuch then as Chriſtian Publique worſhip hath (with us) had little other ſupportation then this Hitherto, and Many think No other will hold, This may affoord at leaſt a Topicall argument for Continuance; that What hath been May, becauſe of none other the world hath had any of the certainty of Experience.

¶ And this ſtep advanceth us fitly to the laſt plea *of Preſcription*, and that confirmed by what it had its firſt ſtrength from, ſuch *continuance of Time* as doth more then manifoldly double and treble that Time *of Having*, which was ſimply neceſſary to Preſcription; (as each pillar before had ſome additionall ſtrength:) Which to underſtand the better, and ground all the firmer, it may be expedient, as in them, to premiſe ſome things of the doctrine *of Preſcriptions in generall*; for this

will

will be the more ſolid and able to endure examination, if we ſhall not fancy to our ſelves, any thing, but take that meaning thereof here, that others have both taken and given.

Mos (1) *eſt longa Conſuetudo de moribus tantummodo tracta*, I begin then with that of *Iſidore* in the Canon: & (2) *Conſuetudo eſt jus quoddam moribus inſtitutum, quod pro lege ſuſcipitur cùm lex deficit:* Combined, as it were, one in another, and are both in effect, *Uſage ſtrengthened into a Law*. Of which Law, if there were never a word in this world, nor *Scriptum eſt* had ever dropped from any learned mans pen, or publique vote to bear Umpire or decide doubts, yet if mens forwardneſs ſhall take up, and Uſe continue, ſome men goe before and others follow in any good way. *This Continuance* by degrees grows up *into a Law*, (eſpecially in England) and what is warranted hereby is lawfull enough; future Travellers may keep that rode juſtifiably and without controll, becauſe they can urge they ſee the print of others footſteps which have uſually heretofore gone there before them. I ſaid, eſpecially in England; for here ſome peculiar influence is from Cuſtome; Our law ſeems much made up of it and more then other, ſo farr that whether it or law ſay the ſame thing is not much materiall with us as to credit or validity. *Conſuetudo verò pro lege obſervatur, in partibus ubi fuerit pro more utentium approbata, & vicem legis obtinet: Longævi enim temporis uſus & conſuetudinis non eſt vilis authoritas*, ſays (3) *Bracton*: It is as ſtrong as Law. And (4) before, *Cùm autem ferè in omnibus regionibus utantur legibus & jure ſcripto, Sola Anglia uſus eſt in ſuis finibus jure non ſcripto, & conſuetudine. In ea quidem ex non ſcripto jus venit, quod uſus* (5) *comprobavit.* As if ſome peculiar regard were given to it, here, *Vivitur exemplis*, we durſt almoſt venture by track, and it may and muſt be well what others have uſed to doe before us. What other ground almoſt beſides this doe we know of many things

(1) Decret par. 1. diſt. 8. c. 4.
(2) Ca. ſequa.

(3) De diviſione rerum, c. 3. ſect. 2.
(4) Id c. 8. ſect. 2.

5) *It follows there:* Sed abſurdum non erit leges Anglicanas (licet non ſcripeas) leges appellare, cùm legis vigorem habeat, quicquid de conſilio & de conſenſu magnatum & reipublicæ communi ſponſione, authoritate regis ſive principis præcedente, juſtè fuerit definitum & approbatum. Sunt autem in Anglia conſuetudines plures & diverſæ ſecundum diverſitatem locorum: *Habent enim Anglici plurima ex conſuetudine, quæ non habent ex lege:* ſicut in diverſis Comitatibus, Civitatibus, Burgis & Villis, ubi ſemper inquirendum erit, *quæ ſit illius loci conſuetudo*, & qualiter utuntur conſuetudine qui conſuetudines allegant.

we ſee done and allowed? Ask the reaſon of *fines*, *Herriots*, (or *Heregates*, for that I take to be the right name, *ſomewhat belonging to an Army*) *Relieves*, *Widows thirds*, (in a ſpeciall manner here) *Copyholds*, to the *eldeſt* or *youngeſt*, and ſeverall rules of right yet ſtirring ſtrife all in ſeverall places; Is not the bottome of moſt of theſe, *Cuſtome? it hath been ſo?* Men have uſed to pay, or give, or do ſo? and This reaſon enough why it ſhould Be ſo. For men are with ſome difficulty debarred their accuſtomed way; Late may not be hindred, what might have been at firſt prevented. So that if overwiſe poſterity ſhall at any time think to awake out of that dream wherin their dull and patient Anceſtors have ſuffered themſelves to be led out of the way for a long time as their new wiſdom thinks, and champing irefully upon the bit, reſolve to call all to ſcrutiny that hath uſed to paſs, and if it cannot give a very fair account of it ſelf, diſcharge it for ſuperfluous, does not the anſwer that heretofore (1) *Agrippa* made to ſome Medlers, ſeem eſpecially fit to be ſerved in to their ſatisfaction? *Intempeſtivum eſt nunc libertatem concupiſcere*, It is now too late to ſeek for what they might have deſired; *Olim ne ea omitteretur certatum oportuit: Nam ſervitutis periculum facere durum eſt, & ne id ſubeatur, honeſta certatio: At qui ſemel ſubactus deficit, non libertatis amans dicendus eſt, ſed ſervus contumax*: They might have choſen, but now they are bound and concluded, the yoke is ſetled on, and muſt be born, (as *Peter* told *Ananias*, Thy money was at thine own diſpoſe, but now thou haſt limited thy former liberty.) And (2) *Joſeph* himſelf, as his wont is, to the ſame Men, Gravely: *It is commendable indeed to fight for liberty, but this ſhould have been done in time: Thoſe that have been ſubdued, and long obeyed, to ſhake the yoke is rather a deſperate ſhift, then an adviſed attempt for liberty.* There be many things, 'tis like might have been amended at firſt, and the work of true prudence have caſt things in ſuch a mould at beginning, as might have ſaved (and prevented) many after following and continually renewing inconveniencies: But when the lot is caſt and the tables ſhut up, the publique hath appointed, time ſetled, and continuance made next to immoveable and natu-

(1) Ioſeph. de Bello Iud. lib. 2. cap. 16.

(2) Honeſtum quidem eſt pugnare pro libertate, ſed id olim factum oportuit. At qui victi ſemel ſunt, et longo tempore paruerunt, ſi jugum excutiant, faciunt quod deſperatorum hominum eſt, non quod libertatem amantium: *Joſeph.*

rall

rall, Then for every thinking man to be tampering with *avitæ conſuetudines*, to amend all he thinks hath been long amiſs, cannot but be the way to much trouble, or is not much removed from intemperate fury: Becauſe he is very weak that *thinks not at leaſt* he can mend ſomewhat in Sir *Tho. Moores* Eutopia, or *Plato's* Common-wealth, and it may be could, but *Some evils are better born then their remedies.* I confeſs my ſelf not very Curious before in keeping my ſelf to that ſtrictly may come under the word of Preſcription, but to that which hath the nature of the thing, to create a title by poſſeſſion and Time: And I know what diſtinction the Civilians have between it and that ranges alſo under the ſame head, of *Uſucapio*: That (1) One is reſtrained to land, The other to goods: One for, *Longi temporis*, the other for yet larger ſize; That (2) to take place onely in Italy, This alſo in the Provinces: But chiefly, that one gives (3) full right of poſitive Dominion, for recovery; But the other onely *Exceptionem contra actionem*, to protect the Poſſeſſor againſt an aſſaylant, cannot recover a diſſeiſin: But theſe niceties are not to be much ſtood upon by us here in *England*, and the rather for that the (4) Civilians themſelves ſtick not faſt to them: We mean, as ſaid, the Thing; that which gaineth Title by (5) Having and Uſing, Poſſeſſion and Continuance; and theſe two, I ſuppoſe, as ſo many eſſential parts, doe goe alwayes to that which is Preſcription. Which is then, ſayes (6) *Cook*, A title taking his ſubſtance of Uſe and Time, allowed by the law; *Præſcriptio eſt titulus ex uſu et tempore ſubſtantiam capiens ab authoritate legis.* He critically diſtinguiſheth again between This founded in a perſon, Cuſtome in a place; A man may preſcribe, a Mannour or Honour breed a Cuſtome: (but this I inſiſt not on neither.) and the Civill law agrees with ours: (7) *Uſucapio eſt* (8) *adjectio dominii per continuationem poſſeſſionis temporis lege definiti.* But now what time is requiſite to create title, would require ſomwhat a large parentheſis.

(1) Joan. Calvin. Lexic. Jurid. in vocab. Præſcriptio. pag. 732. & in vocab. Uſucapio: pag. 959.

(2) Id. in vocab. Præſcribere. pag. 731. *where it is purpoſed, and as the author thinks, firſt ſtarted diſquiſition of their difference:* Vid. etiam Cujac. in paratit. ad Cod. de præſcriptione longi temp.

(3) Vid. Gloſſ. Quod autem præſcriptione in Cauſ. 16. queſt. 4. in Rub. & Cujac. in the place but now.

(4) As may be ſeen in Jo. Calv. pag. 732. cited before.

(5) So Cook on Littleton. Inſt. 1. fol. 110. b.

(6) Fol. 113. (7) ff. Lib. 41. tit 3.. 13. (8) Rectiùs fortaſſe, Adeptio dominii: Sic enim ex Ulpiano Duaren. in loc. & Calvin. in Lexic. Jur. pa. 959.

First, abroad: and (1) by the twelve tables one year was enough for moveables, two for immoveables: If a man had poſſeſſed *bona fide, & ex juſto titulo* ſo long, He was in for continuance. This *Juſtinian* altered, (or rather *Tribonian*,) for three years in the former, and ten in the later, *inter præſentes*, but if the owner were abſent he was allowed twenty. This was called (2) *præſcriptio longi temporis*, which yet ſatisfied not in all: for it was needfull to bring in beſides (3) *Præſcriptio longiſſimi temporis*, which lengthened the leave to claim within thirty years, or in ſome caſes within forty; and here with them moſt things ſtayed.

By the feodall law (1) thirty years preſcription was good, and He that had no inveſtiture, and had been in ſo long and done ſervices ſtood firm.

So by the (5) Canon in many things determinable hereby, though for one Church to preſcribe (6) Tythes againſt another require forty years, and in ſome, (7) other Caſes.

Here at home has been much variety: and we have had no fewer then three ſorts of meaſures to limit and ſet out the time of poſſibility of Recoveries by without or beyond the bound of Which, no hope.

(1) Iure civili conſtitutum fuerat, ut qui bona fide ab eo, qui dominus non erat, cùm crederet eum dominũ eſſe rem emerit, vel ex donatione, aliáve quavis juſta cauſa acceperit, is, eam rem, ſi mobilis erat, anno ubiq; uno: ſi immobilis, biennio tantum in Italico ſolo uſucaperet, neterum dominia in incerto eſſent. Et cùm hoc placitum erat putantibus antiquioribus, dominis ſufficere ad inquirendas res ſuas præfata tempora, nobis melior ſententia ſedit, ne domini maturiùs ſuis rebus defraudentur, neque certo loco hoc beneficium concludatur. Et ideò Conſtitutionem ſuper hoc promulgavimus, qua cautum eſt, ut res quidem mobiles per triennium; immobiles vero per longi temporis poſſeſſionem, id eſt, inter præſentes decennio, inter abſentes vigiati annis uſucapiantur: *Inſtit. lib 2. tit. 6. in prine.*

(2) Non uſucapies niſi ſint tibi talia quinque, Recta fides, juſtus titulus, res non vitioſa, Quod res tradatur, poſſeſſio contin e ur: *Gloſſ* Quod autem, *in Cauſ. 16 qu. 4. in Rub.*

(3) *Vid Cuiac parat ad Cod lib 7. tit 22.*

(4) *Vid. parat ad tit. 29 de* præſcriptione triginta vel quadraginta annorum.

(5) Si quis per triginta annos rem aliquam ut feudum poſſederit, & ſervitium domino exhibuerit quamvis de ea re non ſit inveſtitus, præſcripeione tamen triginta annorum ſe tueri poteſt: *Oberus de Orig. Feud. lib. 2 tit 26, ſect. 4.*

Et vid. Gloſſ. fin. ad Feud. lib. 1. tit. de uſu Mediolan.

(6) Cauſ. 16. qu. 4. c. 1, 2, 3, 6, 8, 9. Decretal. Gregor. lib. 2. tit. 26. cap. 3. *Twenty, or ten was enough in ſome caſes. The words ſee after tranſcribed in pag. 273. in marg.*

(7) *Tit. eod c. 6.* Ad aures noſtras perveuit duas Eccleſias litigaſſe ſuper decimis, quas una earum in alterius parochia annis quadraginta poſſedit: & infra. Tuæ fraternitati tenore præſentium innoteſcat, quod de Iure melior eſt conditio poſſidentis; Quia quadragenalis præſcriptio omnem prorſus actionem excludit.

(4) *As, againſt a Church or a Religious houſe,* tit. eod. c. 8 & Cauſ. 16. qu. 4. c. 16. *approving that of the Code,* de Sacroſanct Eccleſ. Authent. Quas Actiones & Novel. 131. cap 6.

But to hold Tythes, a Layman preſcribes never. Quia cum Laici decimas detinere non poſſint, eas nulla valent præſcribere ratione: *Decret. lib. 2. tit. 26. cap. 7.*

1. The yet ſtanding and yet withall (1) moſt ancient and natural Rule is by comparing with the (2) knowledge of preſent men; if within the reach whereof any thing be ſeen and to be ſaid as known and remembred, the Poſſeſſour is looſe, and may be removed; if otherwiſe, *Melior eſt conditio poſſidentis*, He that *has* is ſecured his continuance of having.

(1) *For it was by the Common Law, before the Statutes, ſays* Littleton. Sect. 170.

(2) *The limitation of a Preſcription generally taken is from the time that no mans minde runneth to the contrary.* Doct. & Stud. f. 19. *as if that had been always. And ſo in the new Additions to that Book.* Add. 1. f. 4. *Alſo abroad,* Ductus aquæ cujus origo memoriam exceſſerit, jure conſtituti loco habetur. ff de aqua quotid. l. 3. Sect. 4. Ac fortè non improbabiliter dici poteſt, non eſſe hanc rem in ſola præſumptione poſitam, ſed jure gentium voluntariò inductam hanc legem, ut poſſeſſio memoriam excedens, non interrupta, nec provocatione ad arbitrum interpellata, omninò dominium transferret. Credibile eſt enim in id conciſiſſe gentes, cum ad pacem communem id vel maximè interesſet. Grot. de Iure Bell. l. 2. c. 4. Sect. 9.

2. But becauſe this might flag, or prove uncertain, and is always wavering, ſome more certain bounds were thought fit to be enquired after, which as ſtakes fixed, at leaſt at one end, migh determine *huc uſque* ſhall inquiry come, and no further; preciſely laying down what might be expected, as 'twere to a year and a day. As in *Glanvils* time, the Claim muſt be laid in ſome (1) Caſes, ſince the Kings laſt Voyage into *Normandy*; in (2) other, ſince his Coronation; in (3) Writs of Right, his Grandfather *Henry* 1. and if on this ſide theſe ſeverall limits, nothing could be ſhewed to moleſt, *&c.* beyond was as good as nothing. In *Bractons* time, under *Henry* 3. the wideſt Writ of (4) Right was bounded by *Henry* 2. time, others narrower, according to the limitation of the (5) Statute of *Merton*. In (6) *Fletaes* time, who lived (likely) under (7) *Edward* 1. from the days of *Richard* 1. according to the (8) Statute of *Weſtminſter* 1. *cap.* 38. And this it ſeems remained to *Littletons* time, about *Henry* 6. for (9) he mentions the ſame to be the *Hercules* Pillar then, beyond which no Claim could be laid to any thing.

(1) In tract. de leg. Ang. l. 13. c. 33, 35, 36.
(2) lib. cod. c. 2 3 5, 6.
(3) l. 2. cap. 3. & l. 12. c. 10.
(4) Bract. de deſaltis, c 5. f. 373. & tract. de except. c. 19. Sect. 1. f. 416.
(5) 20 H. 3. c 8.
(6) Fleta l. 4 c. 5. Sect. 13 p 224. & l 6 c. 6. Sect 3. p. 401.
(7) vid. Seldeni diſſert. ad Flet. c. 10 Sect. 2.
(8) *Made about* 3 Ed. 1.
(9) Sect. 170. f. 123.

3. But *albeit theſe times of Limitation were reaſonable when they were made* (I make bold here to (10) borrow a little piece) *yet in proceſs of time* (there being ſet times appointed in former *Kings Reignes*, from which as a Barque from the fixed Land the future went always further and further) *the times of neceſſity grew too large whereupon many Sutes,*

(10) *From* Cook *in his* Initit. 2. *on the ſtatute of* Merton. c 8 p. 95.

Troubles and Inconveniencies did ariſe, and therefore the makers of the Statute of 32 *Henry* 8. *took another and more direct courſe* (by ſetting ſtakes as it were at both ends of the ſtage,) *which might endure for ever; and that was to impoſe diligence and vigilancy upon him that was to bring his Action, ſo that by one conſtant Law certain Limitations might ſerve, both for the time preſent, and for all the times to come*, viz. *That the Demandant ſhould alledge Seiſin in a Writ of Right not above ſixty years next before the Teſte of the Writ, in others thirty, in others fourty, in others fifty.* This yet left ſome difficulty, which was after explained in (1) Queen *Maries* time, and pieced out as to ſome trifling Sutes according to much (2) deſire in (3) King *James* his time, and ſo do things I think remain with us at this day. Now from theſe ſeverall Limitations of Preſcription abroad and at home, and about them I cannot but note their general end, which was no doubt to prevent Sutes as much as might be, depending on proof remote and of dark days paſt, by limiting to fourty, fifty, or ſixty years, ſeldome farther, *&c.* All which it was alſo fit to note κατὰ πλάτος, or at large, that by ſeeing what has been, not in this place or that, but All Abroad, we may the better make eſtimate of what we ſhall finde in our Caſe, by comparing the length, (wherein is alſo the ſtrength,) of This preſcription, with that has been generally reputed enough, and to eſtabliſh a Right elſewhere. I confeſs the thing it ſelf as to the equity of it ſeems not to me at firſt ſight altogether ſo (4) fair and reaſonable as that Thereon any thing ſhould be ſettled, or There-from derived; for it ſeems as it were many times to ſettle a (5) Right upon a Wrong, a Due upon an Excluſion, (perhaps of Right) and at a venture ſuch a one ſhall keep, what by Gift, Succeſſion, Eſcheat, or otherwiſe *May* in due ſcanning perhaps belong to another: (Perhaps alſo to him that has it, But this is *Uncertain*, and Juſtice ſhould never proceed but in a regular, conſtant, certain, *ſure Way:*) And therefore the prudent (6) gloſs upon the Decree ſcarce allows it to be according to the Laws of Equity

(1) Mar. c. 3.
(2) Cook Inſtit. eod p. 96.
(3) 21 Iac. 16.

(4) Non Præſcriptionem eſſe odioſam. gloſſ. Præſidium ad novel. 9.

(5) Quod initio vitioſum eſt non poteſt tractu temporis convaleſcere ff. de diverſis reg. l. 29.

(6) Nam de jure naturali præſcriptiones non ſunt inductæ; nam de jure naturali iniquum eſt aliquem ditari cum aliena injuria. gloſſ. Legis. ad Cauſ. 16. qu. 4. cap. Præſulum.

and

and (1) Nature, wch would by no means have any one (2) enriched by the ſpoils of another, as here it often is, always may be. But then again on the contrary part it would alſo be conſidered, That there had much need to be ſome (3) end of ſtrife; The negligent is but duly puniſhed if he will not come in in ſome reaſonable time. He knows written in the very face of the Law his perill if he do not come in to claim his own, nor is it fit Juſtice ſhould wait ever; And if Controverſies ſhould be admitted of things whoſe knowledge is ſo farre off and out of our reach, that almoſt all the foot-ſteps are worn out by the continuance of Time, Our life is ſo brittle, changes ſo frequent, Arguments from what we ſee not ſo but probable, and yet ſo many, and on both ſides, but above all the wit of man ſo fertile and pregnant the quarrelling way, That ſtill ſome color would be found out or other, Why that ſhould not be, that is, and that in the place thereof, which is not, and ſo our lives would be ſpent with quarrelling, as our means with charge: Wherefore, & *Ne dominia rerum ſint ſemper in incerto*, as was the gloſs before, it was prudently becauſe neceſſarily determined to have ſome end, wherein if there wanted ſomewhat of Juſtice, there might be amends made in freedom from perpetual trouble and all-conſuming charge; ſome *Herculeſ* Club muſt be found out to ſtrike the matter home in certainty one way or other, or rather ſome *Alexanders* ſword, that what of the *Gordian* knot could not be untied, it might cut aſunder: ſo here, when it grew tedious or rather impoſſible through the manifold complications of crafty Contrivances to bring the matter, whoſe whole ſtage was at a diſtance, to a certain end, for certain yet let ſome end be; and at a venture ſettle upon the Poſſeſſour: He *May* have Right, he has had for a long time the Thing, Poſſeſſion is many points of the Law, (becauſe every man is ſuppoſed at home, and that to be a Mans own in which he hath dwelled a long time without higher acknowledgement or any ones controll,) and this he hath had no one can remember to the contrary but ever: therefore let him Continue to (4) injoy, and he that was ſo lazy as not come in ſome reaſonable time for his Own, let him now ſee one have

(1) *Nay, it is* contra naturalem æquitatem. gloſſ. vel injuria ad ff. de negotiis geſtis. l. 1.

(2) *An old Rule of* Pomponius, Iure naturæ æquum eſt, neminem cum alterius detrimento & injuria fieri locupletiorem. ff. de diverſis regjuris ant. qu. lib. 206. & vid. de condict. indeb. l 14.

(3) Omnes actiones infra certum tempus habent limitari. Flet. li. 6. c. 16. Sect. 3. Tollit amenſurationem (doris) aliquando diuturnitas temporis in perpetuum, cum omnis querela & omnis actio injuriarum limitata ſit infra certum tempus. Bracton. de Act. doris. ca. 17. Sect. 5. f. 314.

(4) *Preſcription and antiquity of time ſatisfies moſt.*

Titles, and ſuppoſes the beſt beginning Law can give, Hobards *Reports* in Slades *Caſe*, pag. 297.

it

it that will be more carefull of it, and perhaps do more good with it. This may not be *well*, yet better then what is *worse*, Not exactly juſt, but the *Good of Peace* compenſates the *Evil of Injury*, and a quiet ſuddain loſs may prove better to the loſer then a gainfull eternal conteſtation. *Bono igitur Publico introducta eſt uſucapio & præſcriptio:* as *Gaius* [1] ſpake, This is now then for every ones good: *Ut ſit aliquid litium finis*, as [2] another makes it out; for now there will be quietneſs what ever there be elſe or more. [3] Whence *Valentinian* made thankfull memory of his Predeceſſour *Theodoſius*, as in favour of humane peace and tranquility, ſetting forth his Edict of this nature, which *Caſſiodorus* called the great Patroneſs of mankinde; And if it do nothing elſe, it keeps the Peace, and where Peace is, either ready there are moſt worldly commodities, or *Non invita ſequentur*, they will ſoon follow.

(1) ff.l.41.tit.3. L.1.

(2) Fulbeck part.ult.c.4.f.20.

(3) *Remembred by* Cuiac. in paratit. ad Cod.l.7.tit.34.

But this preſcription that muſt be thus the ſoveraign and inriching Peacemaker, a virtual fine, (in the rational import of that word, *quia ponit finem litibus*,) muſt [4] have three Conditions, which I but name. It muſt be, 1. Long: (how long hath been ſaid already.) 2. Continual: that is [5] without interruption, by word or deed, by violence or gentle claim. 3. Peaceable, by the true Owners patient and dead negligence. For if he ſtir, the bone cannot ſettle to grow awry, the Winde blowing hinders the Water for a time ſetling into Ice by coagulation; ſo ſtrength is here forbidden to grow of the Adverſaries Right, by him that if he ſtrives cannot recover his own And theſe three things obſerved give a conſcionable [6] Right, againſt all but one, was ſaid before; Now againſt him: for Time though it can do nothing, yet by it are done many things, and though it work not at all, yet without

(4) Nunc autem dicendum quali. certe transferuntur (dominia) ſine titulo, traditione, per uſucaptionem, ſc. per longam, continuam, & pacificam poſſeſſionem ex diuturno tempore & ſine traditione, &c. Bracton de acquir. rerum dom. c.22.

(5) Quod ſi per naturalem poſſeſſionem poſſeſſio interrupta fuerit, à die recuperatæ poſſeſſionis novi triginta anni in omnibus præſcriptionibus numerabuntur. Gratian. Cauſ. 26. qu.4 c.15. (6) Vſucapiens plenum jus incipit habere. ff. de rei vindic. L.17. in fine. Sicut tempus eſt modus inducendæ & tollendæ obligationis, ita erit modus acquirendæ poſſeſſionis. Longa enim poſſeſſio (ſicut jus) parit jus poſſidendi & tollit actionem vero domino, &c. Bract. ubi ſup.

An abator or diſſeiſor dying ſeiſed after five years quiet poſſeſſion gaineth Right to his heir, that the owner ſhall be put to his action, and if he let it run to ſixty, ſhall never recover. Bacon. *of the uſe uſe of the Law* p.25. For, Vſucapio inde dicta eſt, quod per uſum aliquid capit & aufert. Vſus enim per lapſum temporis a limites corporales priori domino, & transfert in alium. Calvin. Lexic Iurid p 595.

it

it is nothing else wrought. *Tempus ex suapte natura vim nullam effectricem habet; Nihil enim fit à tempore, quanquam nihil non fit in tempore*, as (1) one spake pithily. And therefore, as it is a means of (2) dissolving, so it is also of (3) contracting obligations; Settling and unsettling, binding, loosing, doing and undoing. Indeed every thing is done by Time, and without it is done nothing that is done. The Crooked grows Straight by it, the *wrong*, *right*; *Usurpation*, *Justice*; the *Invader*, an Owner; And he that nought else has but what *Length of Time* can give, has (with that, and possession supposed) enough to answer all that can be said to disturb him.

(1) Grot de Iure Belli, l. 2. cap. 4. Sect. 1.

(2) Vid. Flet. l 4 cap. 5 Sect. 12. & Bract. de Actio. cap. 2. Sect. 13. f. 100

(3) Vid Flet. ca. eod. Sect. 15. Quisquis suam ab alio teneri scit, nec quicquam contradicit multo tempore, is, nisi causa alia manifestè appareat, non videtur id alio fecisse animo, quàm quod rem illam in suarum rerum numero esse nollet. Grot. de jure bell. lib. 2. cap. 4. Sect. 5.

Which Soveraign, and almost unreasonable priviledge is allowed upon (4) a double consideration, as well of favour to the possessour, as hatred to the negligent of his own not-seeker: for if he be possessed upon valuable consideration, *bona fide*, and deceived but as an honest wise man might be, there is so much pity of his wrong that he is kept in in favour and for his wrongs sake: But if he were a meer *invader*, and as he entred, continue a meer Usurper, yet so much doth Reason and the Law hate him that is slothful in his own interesse, that rather then he shall have any thing, wrong shall take place (*by right*) against right, and rather then Justice shall always wait upon him that neglects himself, her constant purpose of giving every one his due shall wax weary, and give him onely dismission of suit at last instead of remedy. *Currit tempus contra desidiosos, &c.* as was said, and though the Law could even wish too that He should not have it that has, yet in hatred of his sloth that should seek, He shall never be put out, nor the right owner in.

(4) Præscriptionum aliæ sunt introductæ odio petentis & favore possidentis, aliæ tantum odio petentis. Qui enim bona fide, & justo titulo rem præsentis per decennium, absentis vero per vicennium tenuerit, perpetua exceptione tutus erit, non solùm adversus alios, sed etiam adversus creditores quibus res ipsa obligata fuerat, etiam adversus dominum, *and shall regain if he be ejected.* Si autem nullo titulo, bona tamen fide per tricennium rem alienam possederit, simili gaudebit præsidio, &c. Hæ possessiones introductæ sunt favore possidentis, & odio petentis, quia lex favet his, qui bona fide, & justo titulo, vel bona fide tantùm possident: odit autem & punit circa rem suam negligentes & desides. Quod si mala fide rem alienam quis possidere cœperit post triginta annos adversus omnem petentem exceptione tutus erit. Gratian. ubi sup. *And yet the intruding possessour is afterwards discountenanced: what way he, and by the least occasion set beside the saddle or kept from recovering: But the lazy ow or shall least and last be relieved.*

All this of visible reall things, but so as the same rules hold, *mutatis mutandis*, of Rights and Services: Whatsoever (being intractable) is possessed and (1) owned by use, a continuance of that use conveighing still so much vigour and proportionable quickness to the thing it self, that it daily increases in strength more and more: If it were weak it grows strong, If it were not able to stand alone, it doth now, *tractu temporis convalescere*, and a man *Hath* that he *Had not*, nor can another *Forbid*, what he might at first *have forbidden*. As if a man shall allow a way, an Aquæduct, and by like reason liberty to come once a year and take such a thing, a tree from the Forest, the tenth row when the Coppice is cut, a sheaf or a tenth sheaf out of the field when it is reaped, or the like: *Ex tali usu & patientia præsumitur de consensu & de voluntate: & ita acquiritur possessio ex tempore, ita quòd taliter utens sine brevi & judicio ejici non poterit, &c.* as we may say in the words of *Bracton*. But then there must be presence, and science, the use must not be clandestine, nor in the night, &c. and many other such things there are, *de quibus hic non est narrandi locus*; but they do not contradict or contravene these things or our aim or scope.

(1) Dictum est, qualiter, &c. nunc autem dicendum est qualiter acquiritur possessio rei incorporalis, sicut possessio juris viz. alicujus servitutis, per patientiam, quæ trahitur ad consensum & longum usum & pacificum, sine constitutione vel expressa voluntate. Patientia vero trahitur ad consensum, & acquiritur possessio juris per usum; ut si dominus proprietatis liberum habens fundum, ex patientia permiserit uti vicinum suum, præsens & sciens, in fundo suo, aliqua servitute, ubi jus utendi non habuerit, sicut in pastu pecorum, itinere, vel actu vel aquæductu vel hujusmodi per longum tempus, pacificè sine interruptione: *this presumes leave and creates right.* Bracton ubi sup.

This I take to be the doctrine, and general nature of this accident, in part abroad, but most at home, leading to what prescription is, to our purpose: from which it cannot but be evident, That such a thing there is, The Law allows it, There is plea for it and from it; In time it bindes the hands that were at liberty, and creates a right to that was at first but a lazy permission, or courteous concession, or perhaps violent intrusion: We have seen in what time this may be done, (more then by our bare conjecture,) any limitation scarce exceeding sixty years; and that in a Writ of Right (the highest with us) the possessour need not prescribe farther to barre out any pretender. In some tender speciall cases indeed, (I should

ſhould have ſaid,) 100 years were allowed, as (1) in things given to charitable uſes which might be claimed within the Century, (but this after ſhortned to (2) forty:) and in the ancient (3) endowments of the Church of *Rome*, and formerly no (4) preſcription could run ever againſt *Res Fiſci*, or (5) things of a Temple, or (6) Sacred or Publick, or for Lay-men, as (7) before, to take up Tythes, but where any could run, in common affairs, the Stage was but ſixty years of length, or fifty, or forty; Sometimes but twenty, or ten, or two; And he that came not in within this ſpace of time ſerved a Prohibition upon himſelf, He might not though he would at any time ever after.

(1) Vt inter divinum publicumq; jus, & privata commoda competens diſcretio ſit, ſancimus, ſiquis aliquam rei liquerit hereditatem, vel legatum, vel fidei commiſſum, vel donationis titulo aliquid dederit, vel vendiderit, ſive ſacro-ſanctis Eccleſiis ſive venerabilibus Zenonibus vel ptochotrophiis, vel monaſteriis maſculorum, vel virginum, vel orphanotrophiis, vel brephotrophiis, vel gerontocomiis, nec non juri civitatum, vel donatorum, vel venditorum, vel relictorum eis ſit longæva exactio, nulla temporum ſolita præſcriptione coarctanda. Sed & ſi in redemptionem captivorum quædam pecuniæ, vel res relictæ, vel legitimo modo donatæ ſunt; & earum exactionem longiſſimam eſſe cenſemus. Et nobis quidem cordi erat nullis temporum metis hujuſmodi actiones circumcludi; ſed ne videamur in infinitum hanc extendere, longiſſimum vitæ hominum tempus eligimus: & non aliter eam actionem finiri concedimus niſi centum annorum curricula exceſſerint, tunc enim tantummodo hujuſcemodi exactiones evaneſcere ſinimus. *Cod. de Sacro-ſanct. Eccleſiis, l.* 23.

(2) Vid. in Authent. Quas actiones, *there following, &c.* Vt omnes præſcriptiones contra Eccleſias, ſint 40 annorum. *Novel.* 131. *cap.* 6.

(3) Vid. Novel 9. & Authent. Quas actiones, *alledged but now*, & Gratian *Cauſ.* 13. *quæſt.* 2.

(4) *Inſtit. lib.* 2. *tit.* 6. *de uſucap. Sect.* 9

(5) Univerſas terras quæ à colonis vel emphy-teuticariis dominici juris, reipublicæ, vel juris Sacrorum Templorum, in qualibet provincia venditæ, vel ullo alio pacto alienatæ ſunt, ab his qui perperam atque contra leges eas detinent, nulla longi temporis præſcriptione officiente jubemus reſtitui: ita ut nec pretium quidem iniquis comparatoribus reposcere liceat. *Dat.* 5. *non. Iul. Conſt. eal. A.* 4. *& Eutropio Coſſ. Cod. lib.* 7. *tit.* Ne rei dominicæ vel templorum vendicatio, temporis præſcriptione ſubmoveatur. *L.* 2. *The title might never be ſecured, nor the purchaſe recovered.*

(6) Uſucaptionem recipiunt maximè res corporales exceptis rebus ſacris, ſanctis, publicis, populi Romani, & Civitatum, item liberis hominibus. *ff. lib.* 41. *tit.* 3. *L.* 9. *agreeable to Inſtit.* 2. *tit.* 6. *Sect.* 1.

(7) *Pa.* 108. *in Margine.*

Now then for application of this generall doctrine: and How can This be Then but All and throughout a firm and ſtrong argument for that I contend for? Are theſe things in the Tables of our ſacred Law? And Does Time ſo much of it ſelf Alone, deſtroying one mans right, and ſetting up anothers? And ſhall it be allowed to do nothing alike in a caſe reflecting on God and Religion, if the caſe be the ſame? And proved? *ſc.* that for ſo long time the poſſeſſion (whereof enough before) hath been continued and lengthened here as

may make out that is *reasonably called Prescription.* Doubtless the Law is still the Same, and that good in *one mans case*, (it ought to be so,) that Was *in Anothers*, and Where (1) the *Reason* is the same, *It* ought to be: for *Right knows no Persons* or *Things*, and prescription or continuance of time should bee reasonably interpreted to doe as much *For the Church* as Custome or the same continuance *does and may Against it.* It remaineth therefore that this onely thing be inquired into, Whether such a Right hath been in the Church? and Time out of minde? Sixty years? or other due length or space that hath used to protect and keep safe the present possessour by exception to any intended ejectment, (which if the whole doctrine before is of use by all its strength to create Right and secure continuance Here, The duly and truly prescribing tenant cannot be outed:) And this is as evident as Story, Record, Books, Writings, or other Memorials of any sort that give account of past times can evidence or make good unto Us. For, Ask the oldest man living, What is his knowledge? Ask him farther, Whether he ever heard his Father say, or that his great Grandfather should tell Him that in any of theirs or the next Ages before Tenths were not issuable, and *ex jure* demandable to the Church out of All Lands? Impannel a Jury of twice twelve times twenty of the ablest of that County, and the next, and put them upon the question, Whether they doe not know and believe this Custome to be and have been? Or, lastly, imitate the Conquerour, and send for twelve men out of every Shire, *legibus patriæ optimè institutes*, and sworn (as He did to Them) *Ut quoad possint recto trámite nec ad dextram nec ad sinistram divertentes, legum suarum sancita patefaciant, nihil prætermittentes, nil addentes, nil prævaricando mutantes*; and Put to them What are their *avitæ Consuetudines*, and whether this be not one, *Ex omni annona decima garba Deo debita est, & ideo reddenda*, and so for the tenth Colt, Lamb, Fliece, Fish, &c? And see what they will say. Go to the Lawyer, and let him give his Councel from his Books, Reports, Statutes, Laws, or Charters, &c. Let him turn them, as upon double-feed diligence, and say, whether it be not obvi-

(1) Vbi eadem est ratio, ibi idē jus. *Cook. Instit.* 1 *fol.* 56. *It is a maxim in the Law of England, that All cases like unto other cases shall be judged after the same Law as other case is.* Doct. & Stud. Dial. 2 c 4.

obvious in his Rolls, Records, Cuſtomes, Caſes, Books of Entries, *Natura Brevium*, Laws, Ordinances, &c. ſtill a ſuppoſition, and glance enough *through all Ages* to prove the ſame: 'Tis a queſtion of time, let him give inſtance to the contrary in This or That, a former or later, Any Age or Kings Raign. Deal but within the compaſs of *things known*, *and Chriſt worſhipped*, and I dare truſt to his ingenuity, for an anſwer punctuall, home enough, and agreeable to truth. In *Hen.* 8. time, *Hen.* 7. *Rich.* 3. *Edw.* 5. and 4. and ſo, (like the Lobſter,) back, back to darkneſs, and almoſt bare names of Kings and Government, and has he not ſtill as evident mention (by reflection, and as of things that had their proper ſcene of action and agitation elſewhere in another room) of theſe things in his temporall affairs as any? I would but the whole Iſſue were made up into a Demurrer of this expectation for ſatisfaction Alone: There is ſo much ingenuity and preſumed honeſty comes along with that learned Gown, aſſured, that all the ſons of *Phœbus* (*Quèis meliore luto finxit præcordia Titan,*) or ſacred Miniſters of Jeſus Chriſt would expect doubtleſs no better ſentence of Umpirage (either for the whole or this part of their right) then what his knowledge could, his readineſs would, his juſtice muſt and ought, and his conſcience nor wills, nor dares, nor can but give in according to his evidence. I durſt rely upon whom I never tryed: Wayward men may calumniate, and wilful men miſtake, and weak men ſuſpect or revile what they do not, perhaps cannot underſtand; But there is with that ſort of men (the ſworn Servants of Juſtice, and, as they have been ſtyled, (1) Apprentices of the Law) the Quinteſſence of ſound reaſon & immoveable honeſty, profound judgment and vowed integrity, a love of the truth and painfully acquired knowledge of what it is, that I doubt not but all juſt and honeſt men would have cauſe to go away from them ſatisfied, and reſt in their determinations, as of *Lovers of Truth*, *and Oracles of Sincerity*.

(1) Forteſc. de Laudibus leg. Angl. cap 8.

Take we one for all the reſt, and not to be ſet behinde any of the reſt, who wrote purpoſely near half a preſcription ſpace of years ſince upon this argument, even moſt learnedly.

M. Selden in his Hiſt. of Tythes.

Put

Put to him whether or no there have not been time enough to make a preſcription, and a preſcription, and twice double as much more ſince Tythes were ſetled ! (there may be errour in my form of expreſſion, but take the thing (1) meant,) and if he doe not grant enough to this purpoſe, and More, let Mee have ſaid Nothing. He more then pretends to ſift things to the utmoſt, and with Curious Diligence and watchfull induſtry to dig down to the root of the ancient conſtitution of things, and ſo give the face of them as they have been from the beginning without any fucus or deceitfull gloſs; and though he rove and fluctuate as long as any, yet he ſtayes ſoon enough to have ſomewhat to ſpare, and yet preſcribe over and over, and over. From his eigth Chapter of Laws, little can be had, but *de Jure*, of the right, which has not alwayes taken place in action; (for good Laws have not alwayes had the good hap to conveigh ſo much felicity to the world as they might, by being throughly and fully obeyed:) but in the following he comes home. Chap. 10. He (2) acknowledges ſome payment under the Saxons by *K. Knouts letter yet extant*, or if not, puniſhment: Many Churches under the Conqueror are (3) marked with, *Ibi decimæ*, in that moſt authentique memoriall of our Nation, or perhaps this part of the world, the book of *Domus-Dei*, as *in Suſſex, Hampſhire about Baſingſtoke, &c.* though this neither generall, nor common then. Other (4) evidences of dueneſs and payment are *under Hen.* 1 & *Hen.* 2. *and to them*, And now they *began to ſettle*: A parochial Right is (5) acknowledged and ſuppoſed by *Alex.* 3. & *Hadr.* 4. in their Epiſtles hither treating of them (they lived about the beginning of *Hen.* 2.) and it were ſomewhat hard to disbelieve in matter of fact, ſuch and ſo ſolemn aſſeverations and depoſitions. But about *Edw.* 1. a parochiall right is granted by himſelf, evident *from the Stat. of Circumſpecte agatis, and the writ of Right of advowſon, of that date, where the Eſplees are chiefly laid in Tythes :* (6) And *by the practiſe of the Kingdom it became clear law* (*as it remains alſo at this day*, he ſays) *that Regularly, if no other title or diſcharge, to be ſpecially pleaded or ſhewed in the allegation of the defendant might appear*

(1) Hoc unum petens, ut non verborum Elegantiam, ſed vim rerum expendendam putes. *Amb. Epiſt.* 12.

(2) Pag. 278.

(3) Pag. 280.

(4) Pag. 282.

(5) Pag. 283.

(6) Pag. 285.

pear, every Parſon had a commonright to the Tythes of all annuall increaſe (prediall and mixt) accruing within the limits of his pariſh, without ſhewing other title to them in his Libell. After, giving other things, as of *Cornwall* from *Chaucer*, &c. He (1) concludes plainly *the received and acknowledged Parochiall right in the practiſe of thoſe times, which hath to this day continued: Neither is it neceſſary to adde more for the uniform continuance of it.* Save where a Statute hath diſcharged, or a *Modus decimandi*, (which being Diſcharges, doe clearly preſuppoſe and imply oneration:) And this (being a Lawyer, he ſays) is *Regularly clear Law.* Some curioſities there follow, and judicious, uſefull, needfull diſquiſitions, but ſo as nothing impeaches a full and univerſall Parochiall Right ſetled nine half hundred years agoe, even by his conceſſion: And he hath been generally taken to be no great favouring friend to what more then needs he muſt grant in the Churches behalf, though in this particular I never held him injurious or undeſerving: With his grant taken to be moſt ſparing, he howſoever grants this, and this to our purpoſe Enough. He avers moreover Chap. 11. that (2) after *Innoc. 3. time, all lands paid according to the Canons*; and therefore *no other title was made by the Archdeacon of Lewes to the Tythes of Barrington then in demand, then that the Land lay infra limites Parochiæ ſuæ de Barenton. & chap.* 14. giving the hiſtory of their Juriſdiction tripartitely, into 1. that was before the Norman. 2. to *Hen.* 2. and 3. ſince: he has enough to the ſame purpoſe, the minde whereof having been given before, needs not to be here repeated again. And theſe things at home are agreeable to what was abroad, as cut out by the ſame rule: for as times then were, the Canon ſate over all, which how it diſcharged it ſelf, was ſhewed (3) before, Chap. 7. for Parochiall payment by the obeyed Decretals. (4) *Quia perceptio decimarum ad parochiales Eccleſias de Jure communi pertinet*, as the reaſon is given in caſe of new-broke grounds: *and the action accordingly was, Jure communi fundata intentio*, that is, *by common right Tythes prædiall and mixt were due to the Pariſh Rector, if they were not by ſome ſpeciall title enjoyed by ſome other Church, or diſcharged*

(1) Pag 188.

(2) Page 362.

(3) Page 167.

(4) Cap. cum contingat. tit. de decimis Decret. Gregor. l. 3.

diſcharged by Canonicall exemption: ſect. 1. for they were not ſo much *given or granted* by the Owners as then ſuppoſed, or exacted or expected of or from them by vertue of any act of theirs, as to conceſſion (of the right at firſt) or after delivery, As they had been *Reſerved* by God at firſt, at the grant of all, *in ſignum univerſalis dominii, quaſi quodam titulo ſpeciali ſibi Domino decimas reſervante*, as the Law ſpeaks, Never making the right out of himſelf that it might return: As a load of Hay, a Mine of Lead or other Mettall belonging to the Lord, is not ſo much a due iſſuable out of that land he hath let to his Tenant, as a reſervation to himſelf at firſt when the Land was let, and he parted with the fruit of the ground; or as if the ſame Lord cuts his wood or timber, and carries it away from his tenants land, His tenant *Pays it not*, but *gives way to the taking* of that was always excepted and reſerved; Or as no Mannour or Pariſh ever laid out any Kings high-way, but the King alwayes kept it for his other ſubjects out of the grant from himſelf: So, I ſay, God reſerved (the times ſeemed to take things ſo,) the tenth as his part never parted with, and as his Own (ſomewhat like a quitrent) it might be ſeized on *Jure communi* without any order or Act of man, by vertue of primary exception or reſervation. And according to theſe things, *the Rector in his libell, upon the allowed Actio Conſeſſoria, needed propoſe no more then that the demanded increaſe aroſe within his pariſh*, the reſt would follow: *Which action, if Durand diſallowed, grounded upon common right ſuppoſed, and approved rather of a Condictio ex canone, by ſome poſitive male law*, (not by generall right but Statute-Canon-Law, or agreed on Conſtitution) this is all one to my purpoſe, and for an allowed granted right in thoſe days, which is all I ſeek for. Of what is behither, (truſting to any that pretends to know,) I need ſay nothing.

Page 151.

All this from one man, yet living, and worthily of fame enough for learning, not confined by our own ſeas, nor ſcarce Chriſtendome, Neither can he but know, and I beleeve, will be ready to averr many times more in this caſe; that if homage were paid to the earthly Lord, rents or ſervices to the publique

publique, or any thing to any man, this, *ſignum univerſalis dominii*, was ſtill allowed to Religion, (of more publique and nearer, inward concernment then any thing elſe) even to Gods houſe (who is ſupreme Lord of All) and his publique ſervice; neither may his Miniſters but preſcribe long enough for it, as due, under the notion of equivalent to what was Levi's under the law, Behold *I* have given them the tenth in Iſrael (ἐν κλήρῳ) *for their lot*, for their ſervice which they perform in the tabernacle of the congregation. Numb. 18. 21.

But now ſteps forth Doctor *Tildeſley*: whom this large extent ſatisfies not, and therefore he undertakes the higher dark times of much further, and would not but that univerſall right and poſſeſſion of theſe dues has been here Cœvall with the Chriſtian law, and of the ſame date for beginning as Baptiſme and the ten Commandements: He endeavours to reply to the exception, and anſwer the plea for the broken payment till about *Hen.* 2. As from the *ſecundum Antiquam legem debemus*, in K. *Knouts* Epiſtle, *& ſicut prædeceſſores noſtri conceſſerunt*, an ancient grant Then; from the grave teſtimony of *Auſtine* our firſt preachers time, inſerted into K. *Edwards* ſo famous law; from a likely fair interpretation of thoſe ſcant returns of Tythes in * *Domus-Dei* Book, that it might be but according to the opinion of the Inquiſitors prevailing (as to the affirmative or negative) in the queſtion of Expediency or Duty, Whether it were fit or meant they ſhonld be returned, &c? But I examine not the validity of eithers arguments or anſwers, and as little minde the ſeen poſſibility of more ſtrength on one part, or reply on the other: let their arguments fight (their mindes being in Charity;) which ever prevail, I have in the mean time gained a certain doubtfulneſs of thoſe times under contention, and as much certainty of enough beſide ſince: on This ſide over and over ſufficient for preſcription; Beyond, that which May yet afford more ſtore, and this from thoſe were able and are famous for their purpoſed diſquiſitions.

Animadverſions on Mr. Seldens Hiſt. of Tythes.

* *I have retained this word all along in difference from the uſuall repreſentation thereof, As well becauſe it ſeems moſt reaſonable giving ſomething of the book not uſually heeded, ſc. that it was kept in the Church; As alſo becauſe I had information from the moſt Reverend and Learned L. Primate of Ireland, that it is the ſame he hath ſeen in many ancient Manuſcripts. Afterwards I found the ſame alſo in the Latin preface to the third book of the L. Cooks Reports. The coincidence of Both which to mine own conjecture before, did not a little erect and ſtabliſh my wavering and doubting confidence.*

Now after this abundance together, it may be no doubt ſuperfluous to look abroad for more. What is within the reach of common obſervation could hardly eſcape their views,

eſpecially His, who had examined that and more: What might be had from hiſtory, pleas, writs, ſtatutes, and other information of beſt but common credit, would be but to light a candle before His Sun, or as the gleaning of a little after full heaps, and therefore may well here be ſpared: In ſhort, The clear evidence of Things abroad is ſuch, and the light of Truth concerning them ſo common beating in every ones eys, that no one that is fit to ſpeak, but muſt have knowledge enough to ſay, that for Centuries upon Centuries, ages and generations, and the repeated revolutions of many hundred years, to create preſcription by continuance of paying and receiving, There hath been time enough, and enough, and enough and ſpare; and if twice five times ſufficient to raiſe it in another caſe may here ſerve, (ſet aſide the otherwiſe ſufficient pleas of Donation and Poſſeſſion) none of this will be wanting with either greateſt aſſurance or faire probability.

It is ſaid there could be none without poſſeſſion (whereon 'tis founded,) and every one knows where the dues are kept all the year; This was prevented before: for both a Poſſeſſion, and through continuance of time is *for that Right* is made uſe of but once a year, or when there is occaſion: Let the truth repreſented in a few more lines of Maſter *Selden* be the *Coronis* of this part. He obſerves, [1] that *out of any continuance alone of voluntary payment a kinde of Parochial right was then created*, (ſpeaking of about the ninth Century) *though a voluntary conſecration might do the ſame*; and [2] afterwards, as this wars the cauſe of Right to a Church whereto they had been ſo conveighed; ſo, *Continuall Payment of many years did ſo ſettle the perpetuall Right of the Tythes of any Family then, that whither ſoever it tranſplanted it ſelf, it muſt ſtill ſend whither it had uſed*; as if this continuance had for ever ſo bound it, that it might not pay them otherwiſe. This then; and it was about ſeven or eight hundred years ago; How much more ſtrength then muſt an uſage that has its force and being from time, and ſo according to nature, ſhould, (as it does) *tractu temporis convaleſcere*; get vigour in its age, and be more fat and well liking? How much more ſtrength, I ſay, muſt this uſe have *Now*, that how much

(1) Chap. 6. Sect. 2. p. 72.

(2) Fa. 78.

much the older it is, is ſtill always ſo much the ſtronger? And if in ſome Countries there may be a preſcription, *De non decimando*, totally, and with us it uſually prevails, for a *Modus decimandi*, which is againſt the Church, compared in matter of Right or Wrong to an Orphan before, How much more reaſon [1] is there that the Church, *The Pillar and Ground of Truth*, ſhould preſcribe for her ſelf, then others againſt it? that that prevail which tends viſibly and likely to the ſupport of the Goſpel, then what may prove the ruine and ſuppreſſing of it? whereby the ſervice of God may be upheld, then whereby it may ceaſe? Shall Time be of force to ſay, A Right ſhall Not be paid, and ſhall it not ſettle more firmly, that A Right *ſhall?* It muſt *not*, Rather then *it muſt*, ? In other things preſcription is generally a good Plea, for Rights and things, and ſo Doubleſs it is in This.

(1) Meritò ſumma habetur Ratio, quæ pro Regione facit. Hobards *Reports in* Slades *Caſe*, pag. 295.

CHAP. XXXIII.

IAmque opus exegi, and hope I have not failed in either part of my undertaking, that if either Title of three, and All good be Good, if either ſtring of three will hold, and all uſually ſtrong enough, I have not fallen ſhort of the proof of a Civil Right, and that by that Law by which here All things are poſſeſſed. *Is that any ones is Given him?* We have ſhewed plainly this *Donation*. *Can this gift be confirmed by confirmation?* This hath been offered and largely diffuſed, all abroad abundantly. *Is that I have, Mine?* Sure, 'tis naturally, and none ſhall deprive me without wrong for Poſſeſſions ſake. Now where is the *Poſſeſſion Here* the World ſees. *May this Right founded in God, in Heaven Originally, on Man but derivatively*, and by conſequent ſubſtitution, *fright boldeſt men from laying on their hands, and*

scambling with their Maker? What even the Law hath said, in this behalf hath been heard and may be remembred. *Ought I still have, what I Have had?* I challenge a liberty, a way, a right, a power to present, meerly becaus I have had, and so used: And *this is not here wanting for Ages and Generations.* The result of all questionless, A CIVIL TITLE, firmly: and by these three distinct ways, by which men *Generally* injoy with us, and they have *enough in Any, by All meeting* is here *a Conspiration* of at least *a treble sufficiency.* Bless we God, who hath not left the support of his Gospel Here to the Good will of Men, and uncertain, tottering, voluntary Contributions, but as was said at beginning, hath given habitation to this truth (with us in *England*) Firm and Stable, and by the helping seconding acts of favouring state raised and established (as to the outward frame and support thereof) his Temple on the Mount of the same materials and under equal shelter of temporal strength and firmness, with the lower buildings of the valley; The Church is as strong, stands as fast as the mannour house, and even as much *Lower Law* for the Civil Temporal Right of these Dues, as any other mens Possessions or Inheritances do lay claim to for their sufficient supportation. *This is the Lords doing and wonderfull in our eys*, and so let it be also gracious, and the occasion of much thankfulness with his People: Looked upon as no other then a Work of his Very favourable providence for the safe and long Continuance of his own honour, and one of those comforts that may be among the Greatest to those that love the Lord *Jesus Christ* in sincerity; A means of firm establishment of the Gospels Ministery, and to hold out that blessed light of *the Christians Law* to us which may be a Lamp to our feet, and a Lantern to our paths, to guide us into the ways of peace, in exclusion of *Saturn, Jupiter, Mahomet, Frea, Thor, Woden*, or whosoever shall go about to recover or obtain a place of honour in our Temples, now dedicated to the honour of the most high God, and his Son *Jesus Christ*, with the Holy Ghost, to whom be all honour and glory in Them and through the World fot ever and ever. And all these things made good too by no other then those have been reputed

most

moſt proper ſtrengths, The Laws of the Land, No other Language almoſt uſed, no other Books, or but rarely, cited, Among that world of Volumes that are of other things, and ſome on this ſubject, in another way, yet none choſen, or ſtuck to, but theſe & the moſt of them ſuch, and ſo claſſical and authoritative, that they make the Judgment even of the very Judges. I deſire may here not unſeaſonably be awaked to preſent remembrance and due obſervation which was laid down before, but had There ſo much amplification, becauſe it was to have here its preſent uſe and operation, and it is, that *This Law* is here below in this World, *The onely Umpire of all things, the Rule of Right, the Judge of Own, the Stinter of Strifes*, and the only *Didoes Thong* that makes out the Line by which the Limit is drawn, that fences Severals from the Common and among themſelves, the onely Donor and Continuer, Preſerver, Suſtainer and Eſtabliſher of Every mans Due and Own, by which he hath to himſelf What he hath, and No one elſe hath any thing to do with His Right or Inheritance: that gives the Maſter more then the Servant, the Gentleman more then his Tenant, the Nobleman more than his Fermour, or the rich and wealthy Merchant then his neighbour Mechanick; intitles him to his Land (or Rent) fences in his Incloſure, pales his park, makes a Thief that enters, and takes, and carries away, and inables him to ask, and have, and ſue, and obtain, and recover againſt the moſt ſtubborn and unconſcionable injuſtice, Whereby he is ſo far as he is, Lord and Maſter of All things. The Law, I ſay, The Law it ſelf doth this Alone, apportioning thus to every one certainly and juſtly, to every fellow-Commoner His Own (in how much diſproportion of Quantity ſoever, with the ſame Equality of Juſtice,) to one man Delicates, to Another but bread; to One Silks, to Another Frize; to him Robes, to the other ſcarce Rags: All this doth one and the ſelf ſame law miniſtring to each as it liſteth, whether a Mite or a Talent, a Garden or a Field, a Palace or a Cotage: *And if Then this Law ſhould fail*, this Rule by any device be Made to warp, and this Strong Spring prove now too weak (in its full force by all Authority) to bring in known dues *to Some*, (who have the ſame claim with All,) who

assures that not *to Others also*, who can pretend to expect by no further or stronger? If this Judge should not be able to make good his sentence, If this bountifull hand should wither, and prove short to reach out allotted proportions to Whomsoever under equall reason of Right now, Who distinguishes the Sinews, or can warrant their Office long to quicken and actuate those fingers must reach to the wealthy *Their plenty and abundance?* Or not rather doubt their weakness or strength, quickness or deadness, life and vigour, or lost power and infirmity may have together and to All (as proceeding fom the same Cause of livelines or obstruction) the same Uniformity? This is the *Basis* whereon all is settled, the Rock whereon all is placed, the great Bottom whereon all is imbarqued, that in *England* we call Goods and kept a floating; If any should think himselfe so cunning with his malice (prompted on by his Covetousness, for it can be nothing else,) that He thinks he can sink a part, boring a hole at that end where his neighbours Goods are laid up, (the servants of publick holy work their wealth and sustenance is treasured) (without further regard to the Community within,) Let him take heed ere long he hear Not the lowd and shrill Complaints (with fearfull Out-cries) of all his fellow perishing Merchants, who are preserved in and by the same, and whose property and safety must all by Consequent be in danger to be lost or gained, sink or swim Together, to satisfie the greedy desires of those that come plainly enough within the compass of [1] St. *James* his Character, *Ye covet and quarrell, and ask and yet ye have not because ye would consume it on your lusts.* And let great Possessours Chiefly look to themselves, for——*&c.*——I was going on to due and nearer application, but the figure *Apostopesis* lays my hand upon my lip, and forbids to speak meaning well, what may be ill interpreted, and therefore prudently and silently let this inference be left to the working of every ones own Christian and reasonable thoughts. Onely this I cannot but add, That there are seen great disproportions in the World, and some have notable advantage thereby, *The Ground of all which is the Law*: There are very great heaps, injoyed with security,

(1) Iam. 4 2,3.

and

and none dares now touch the property of the rich and wealthy in a farthing; If this be touched and removed or violated, the bound is going that keeps All from primitive Community, *And Therefore* they should think much hereon who Have much to lose; They should love to keep the Fence whole who would not have All Common, & the boldness must be extraordinary of those other who in private condition Dare venture to tamper with the *Foundation of all Distances*, medling with that in Politicks does as much as the grace of God in Religion making *one Man to differ frō another in whe esoever he does differ: For What hast thou thou hast not received* hereby? and *that gives us all things plentifully* and ichly, sol ely & only *to enjoy*. 1 Cor. 4 7. 1 Tim. 6. 17.

But now some one May say, These are but Logical Arguments, humane Reasonings, fallible and liable to Mistake; Whereunto I answer as readily, assuredly Even so, and there is no doubt of it: None so far out of the way as he that thinks he cannot err, and incurably too, for as much as this perswasion in his minde is as bad as poyson in his soul, hindring all possibility of healing his errour. If then replied what farther probability, It is not so here, and This is right? Have *Others* thought the same? Hath any thing been *done* accordingly? How have the fruit of such perswasions or Actions been exhibited *in view and in things existent?* I answer, Well enough: And this leads inquiry into two things yet behinde fitly, and to this place reserved, and they are, 1. What the Lawyers have given in as their Opinion upon the former or like Grounds. 2. And what has been Done: What the one have thought, and has been the fruit of the other seen in the World.

And first, *Ask the learned in their profession*: It uses to be so, and prudence thinks it has had especiall work in such obeyed directions. To the Physitian in doubt of a disease; To the Artificer in a point of skill; To the Divine in a Case of Conscience; To the Husbandman or Artist in that their callings or conversations fit them to direct about; *Every one of these is wise in his work*, as the wise man says, and we use *to rely on the Practised and Experienced.* Go then to the Student, Ask the Counsellor, Move the Judge, Apply to a whole Jury of Judges, or the Corporation of Learned Men, dispersed through the Land, There is never a one will set his

hand.

hand or his thought to the Contrary, or deny it to This, *That Tythes are as due to their due Receivers as any thing else to whomsoever it is due:* He cannot go against his own light, He must know This, and he ought and will subscribe and do accordingly. 'Twere strange to finde one of a Kinde singular from all the rest: He were a Monster of his profession that had the protuberation of a strange opinion *excessive and swelling* out of his bosome, different from all other of his sort: And as such they would look upon him at *Westminster*, that should peep out into the world with this new discovery, that *Tythes are any longer Alms*, or a *Voluntary Benevolence for the support of Christian truth, not Duty and a Due* by strict retributive Justice. Have they not councelled? Have they not practised? Have they not judged? Do they not Judge, and still commit sentence to execution accordingly? And manage the whole series of their most honourable studies, and imployments Still as upon such a Supposition? Unwilling men have not *Given*, but *Paid:* Could they ever relieve them? They have complained, *Their goods upon this pretence have been taken from them:* Where was their remedy? Their *Neighbour Bench had Ordered, Appointed, Given, It should be so:* Whence any Comfort! Nay, They, the Secular Courts themselves have assisted. For if the Consistory appointed, and the convicted denyed to pay, The sentence of Excommunication was Orderly and Leisurely but Certainly backed with the Writ *De Excommunicato Capiendo*, to take him that refused as a Rebellious Son of the Church into safe Custody of the State, as contumacious and refractory to allowed orders, and No relief, but still and more assistance and farther prosequution by whatsoever *Ployden* and *Littleton* could do, that one sword might help another. Nay, themselves have interposed (some say, Too far; the Statute never meant it) at the first instance, and drave on the Statute of treble damages for Justice to Execution in their Court: And were they not Just even when they were, Judging as the King *Ahashuerus* desired the Queen should be, *Vashti* according to Law? *Esth.* 1.15.

Ridley: *View of the Laws* par. 3. chap. 2. sect. 2, 3, 5, 6.

But to instance in some particulars. Of which those that offer themselves are too many, therefore I content to take up my

my ſelf with a few: Beginning with that right worſhipfull and learned Benefactor even to the Learning of an Univerſity, the moſt deſerving of Religion, Vertue, Learning, and all Goodneſs, Sir *Henry Spelman*. He was not indeed a Lawyer; but More: Himſelf bewails the miſ-guiding of his tender years (1) too ſoon out of the direct way to graduated and profeſſing in that moſt excellent knowledge; But he that ſhall heed the demonſtration he gives the world of his Sufficiency in thoſe Noble Studies by his Gloſſary and ſundry other exact pieces extant, will be forced to confeſs him above even meaſure for a Profeſſour, and not unworthy to teach ſome Maſters; As having digged down to the foundation of our Fundamentals, and not unworthy to ſit in the higheſt Chair of the Learned. Now he tells us in one piece, (as I remember, for I have not the Book by me,) that although Tythes and other Rights of the Clergy had not been primarily due unto God, by the (immediate) rule of his Word, yet Are they Now His, and ſeparate from us by the voluntary gift and dedication of our ancient Kings and Predeceſſours: and who ſhall violate the will of the dead? whoſe impiety ſhall dare alter, change, invert, divert the ſtreams of their pious bounty, and heavenly inſpired charity, out of thoſe channels their wills ſet them in, to move toward and end in the advancement of Gods glory! If it be but a Mans Teſtament, ſaith Saint *Paul*, who diſannulleth or addeth thereto, being once confirmed? and ſhall not religious indowments be yet more ſafe, and from violation, being Given Legacies, and having all poſſible humane confirmation! And in a Treatiſe publiſhed ſince his death, he is yet more expreſs; 'Tis fully and ſolely of the Right of Tythes, and (taking the ſubject at large) He begins, *That God will have a part not onely of our Time, but Goods*: That *Chriſt releaſed not Levi's part in them*: That *there is ſomething in nature for That dueneſſe and proportion*: That *they are due by the Eccleſiaſtical Laws of Councels, by the imprinted Laws of Nature*, by *the written Laws of God*, by *the received Ordinances of Nations*, and laſtly, ſcrewing it up to the equall heighth of our propoſition to a ſyllable, That *they are due*

(1) In præfat ad Gloſſar. pa. 1. *and in his Treatiſe of Tythes*, pa. 161.

Gal. 3. 15.

Chap. 27. pa. 111 &c.

(with us) *by the Law of our Land.* By what Law? the very Secular, Temporal, All-ruling, All-giving, which ſettles all men in their poſſeſſions and inheritances; and he alledges for it divers of thoſe principles which before (as not borrowing of him) we alledged to this purpoſe: (whence alſo we hope We have not been miſtaken, becauſe we finde his vote conſenting and ſtrengthning ours.) As K. *Edwards Law*, K. *Æthelſtanes Law*, K. *Edmonds Law*, K. *Edgar*, *Knout*, and *the Confeſſour*, beſide the Conquerours:

Heu tot ſancitas per plurima ſecula leges
Hauſerit una dies! hora una! & perfidus error!

as he exclaims: Shall one mans days change all ſo many? and the fruit of beſt humane wiſdome ſo ripened by time, and grown (as an Oak) by leiſurely degrees to greateſt Maturity of ſtrength be pulled down by ſudden revocation! If *the things were lawfully conferred,* (as *none can doubt but they were ſo,* lawfully,) *Then let us conſider,* (ſays he) *how fearfull a thing it is to pull them from God! to rend them from the Church! to violate the dedications of our Fathers! the Oaths of our Anceſtours! the Decrees of ſo many Parliaments! and finally, to throw our ſelves into thoſe horrible curſes that the whole Kingdome hath contracted with God* (as *Nehemiah and the Jews did,* Nehem. 10.) *ſhould fall upon them if they tranſgreſs herein! Say then that Tythes were not Originally due unto God, & c. yet are we in the caſe of* Nehemiah *and the Jews,* Nehem. 10. 32. *They made Statutes by themſelves to give every year the third part of a ſhekel for the ſervice of the houſe of God. And* (ſo) *our Fathers made Laws among themſelves, to give a portion of their Land, and the tenth part of their ſubſtance,* that is, *the Parſonages for the ſervice of the houſe of God. If they were not due before, they are now due:* For, *When thou voweſt a vow unto the Lord thy God, thou ſhalt not be ſlack to pay it, for Jehovah thy God will ſurely require it of thee, and ſo it ſhould be ſin unto thee.* Therefore ſee Act. 5. 4. If *the King give a gift of his inheritance to his ſon, his ſon ſhall have it: If he give it to his ſervant, his ſervant ſhall have it,* (their times:) *If the King then give a gift to his Father,* that is, *God Almighty, ſhall*

Deut 23. 20.

Ezek. 46. 17.

not

not he have it? or, the servant to his Master and Maker, shall not he enjoy it? Who hath power to take that from God, which was given unto him (if not by vertue of any command from, yet) *according to his Word, &c.*

Thus far that learned and pious Knight: Which yet I have not transcribed so fully as I meant, because the words of the Laws alledged by him, in the sense we doe, and for proof of the same conclusion, were represented in words at length before upon occasion; And yet thus much too was needful to shew consent, that we vent not, nor invent of our own, but of the same words make construction to the same purpose, and have the same apprehension of things upon the same grounds he both had and gave: Premises and Conclusion the same from the same; for singularity either of opinion or proof brings always with it some suspition. We see, he saith & here proveth, that beside Canonical, Natural, Moral, and as it seems unto him, Divine Law, our Civil Laws have added whatever of strength they can give to create a Topical and English Political home-right of Dominion & Power: *Jure Soli* as they use to speak, as well as *Jure Poli*, to settle these Dues where they are. The former may have been our Ancestory *Principles and Rules* which guided them at first in settling as they did, (and with these, many things else,) But now we little need to go so far, (unless *ex abundanti*,) for Surplusage of strength; for however it may have been disputable at first of the Natural or Moral right (as of sundry other things, Manours, Honours, Inheritances, &c.) which concerneth also the Indians yet, or other Infidel Nations, in state that ours once was of, *To be converted*, where, nothing publick hath been done or passed for them; Yet as when *Ananias* and *Sapphira* had given, the state of things was altered, and their Duty or Danger; So here the Pactional and Civil having made chains of continual and successive binding Ordinances to hold, retain, and keep these things fast and thus, Now the principles may stand by, the inference being justly made, stablished and of force. and without further inquiry, the *Stated Made Right* must be here enough, or None have with us any thing.

This worthy and Worshipful Knight (whose degree gave

him not so much title to those honouring Epithetes, as his Worth and true Worthiness, as we would call it Worthyship, and who honoured his Titles, as much as They Him) was a man singularly Learned, profoundly Judicious, of most tender conscience, and lively, quick zeal and love of his God, and Christ, and that his flock which we call the Church: no way interessed, save to his own prejudice, and by his lay condition rendred incapable to reap any fruit of this Harvest, hee here so earnestly strives to defend from spoile, nor like to eat a bit of that bread, he here so zealously defends in behalf of the true owners, (*Memoria justi in benedictionibus;*) yet it pleased God to stir up his heart, and he
Is. 6.7. that touched the Prophet *Esays* lips, with a coal from the Altar, no doubt touched his heart and quickned and directed his minde to indite, and his pen to write and set down many profound and unanswerable arguments for truth against sacriledge, kept secret from those that *stand always in the house of the Lord in the Courts of the house of our God*, as
Psal. 135. 2. the Psalmist speaks, the professed and dedicated servants and Votaries of the Temple; and because unInteressed to make him the *fitter and more likely to be successful Champion* of Justice, Truth, and true Religion, in their outward visible supports, then those whose known interesses would always have taken of and diminished from the worth or effect of their sufficient, or never so well-meant undertakings and performances. Which outward supports let them be stirred when they will, (men may dream and think they propheſie, but) an ordinary Humane eye can in reason probably fore-see nothing but very soon & too sure the decay of Religion, the fall of the Church (as to outward frame, order, and support,) and Christian piety it self (I speak in humane consideration still) ready to fal flat down to the ground, or degenerate into Natural. God can sustain it miraculously, & feed his servants waiting on the Ministery thereof now, as he did his people in the
1. Kings 17. 6. Wilderness, or the Prophet *Elijah* by a Raven, or yet more miraculously without any meat at all; or perhaps in as equally strange and wonderful way, by the men of this world their voluntary Benevolence: But speak according to inferiour proba-

probabilities as things depend here on their cauſes, or in humane expectation, which is to be our *lower* rule, and thus, He that conſiders the Courſe of this world, the ſleight eſtimation that moſt have of the beſt things, the ſtony-heartedneſſe of men to part with what they Once Have, the neceſſity of bread for man to live on, and the unlikelineſs of enough to come in for this end any other way, Cannot but conclude (the rather, becauſe ſome Preachers have been reported ſtarved of late, One by very likely information I knew, conformable enough to the times, yea zealous for them,) that there is much cauſe to *Fear*, leſt the Light fail with the Candleſtick, the Miniſtery fall with the Means holding it up, the Goſpel be a ſilent word when there is no voice of a Preacher, nor will be Preaching much longer then holdeth out this Maintenance. Thoſe Labourers of the Lords Harveſt fixed in their ſtations are not like to be preſerved much longer in Being, Health, Order and Number, then this accuſtomed food is allowed them which they may Claim as their Own (not being beholding to Others, or Depending, which is always grievous to ingenuous natures,) But as they labour ſo be ſure to live. Plenty and delicacy are not the things ſtood upon: Religion, though ſhe know how to abound, as well as to want, and how to diſpoſe of ſuperfluity as well any other, yet ſhe cares not or ſtands not much upon Wine and Cates; Let the Epicures and men of this world hunt after this draugh & ſenſual contentments whoſe empty and carnall ſouls know no other means of contentment or comfort, *whoſe Belly is their God,* Phil 3. 19. *and Glory their ſhame, minding the Earth*, as the Apoſtle ſpeaks, and whoſe care is onely to feed, grow fat, and lie down with the Swine, 'tis much to be doubted alſo to riſe with him: But Being and Comfort are thoſe Bleſſings which even the Children of God deſire to be made partakers of in this world with ſubmiſſion to the will of their Heavenly Father. To have *to live of their Own*, and not *be burdenſome* but rather *helpful to others*, their reaſonable deſire, And that they may finde the Scripture true, (1) *They that ſow ſpirituall, 'tis no great matter if they reap temporall*; and (2) *Let the Catechumene* (He that is taught) *communicate unto his Catechiſt*, (1) 1 Cor. 9. 11. (2) Gal. 6. 6.

Catechist, (or Teacher) (which how can it be done better then in the way of the Tenth of all?) *in men, in all things necessary*, or as 'tis usually rendred *in all his Goods*. This is that men *In this world* though not *of this world*, will always stand upon while they live here below in this scratching and scambling world for honest as well as necessary ends; O that mine eyes could spy a way, if that *which Is*, mens greedy parcimony and stubborn perfisting in Unjust as well as Covetous desires will have no denial but they will be left at liberty to pull away, How a constant supply should come in (while men have souls,) to support an Army of near (1) ten thousand able Commanders, who should præside and govern (decently, orderly, and as becometh the Ministers of Christ) over so many dispersed Congregations. The slender endowment of many Vicarages not hitherto at all increased, The wretched allowance of little more then some Shepheards wages usuall for Cure of souls, and by the bounty of the Parish seldome or very little augmented, The yet worse way in many other places, where was more liberty of raising a support by voluntary rate and less expectation according to Law or Obligation by it, Do give cause of even *Trembling fear* to think, when this liberty shall be inlarged to All, and men be bound to pay no more, then what they can be content to allow themselves to be forced to part with, Whether then there will be almost any discharge of Cure at all, or the weekly sacrifice perhaps altogether cease, if the necessary supply of means for the outward bodily labour, should be suffered to come in in that Experienced scant way, which hath hitherto left the highest and best house in the Parish no better furnished with a Levite to serve (or rather to starve souls) then were *Jeroboams* Priests heretofore, *the lowest of the people?* O Christian, if thou be, look upon the Impropriations (as styled) in generall, Behold there the Image of *Pharaohs* lean kine in the slender slack allowance usuall, a next to Beggarly Exhibition of what would little more then keep a single simple man alive to Read, where Legall indowment had stated no more, A Faulkoners or some good Journey mans entertainment exceeding what was usually allowed by the Rectour who

(1) *For, neer so many distinct Parishes there are in England already, besides needfull Chapels, & seems much requisiteness of more by the over-grown bulk of Divers in Sundry places since the last distribution.*

1 King. 13.23.

who received all the Tenth from the people, And yet worſe of my knowledge where the free-will-offering of the people of a Pariſh hath not for all the Kings Reign, nor doth yet raiſe above half a good Shepheards wages, about ſixeſcore ſhillings yearly for the Shepheard of ſouls; And then, if thou have any Bowels of compaſſion over ſouls, keep them from earning if thou Canſt, If thou have pity or love to Religion or Chriſtian Men, think hereof and judge accordingly. Experience, the Miſtreſs of Fools may at ſome times perhaps teach wiſe men more wiſdome; Let it at leaſt furniſh us with Caution, by what has been to make ſome eſtimate what is like to be, What may, or will, or perhaps Muſt; and to be wary, look back, and Compare where no ſtated ſet allowance has been by Dues to be ſued for, and then judge. I do not ſpeak abſolutely: I am no Prophet or the ſon of a Prophet, Our foreſight of things in their cauſes is always here but dim and as of Probabilities; The ſuffering every man to walk in the ways of his own heart, in this matter, and to follow the light of his own eyes, *May tend* I confeſs to not the worſt prejudice, or by altering but to ſnuffe the light that it may burn clearer and to more content of thoſe ſhall both maintain and uſe it; yet no man hath cauſe to be offended with my jealouſie in the things of my God, tendereſt care and fear of the worſt about his Honour, or that in zeal to the worſhip of his Name I poure out my ſoul in devout ſupplication, *God grant it tend not to put the Light clean out! Heavens vouchſafe this great favour to Earth that Covetouſneſs triumph not over Religion, and Having away what is thus Coveted, lead to and end in worſe then Popiſh even Heatheniſh darkneſs!* For this I know, Heathendome (as the word was when it went off,) was here before Tythes were paid, Never effectually expelled but by them (outwardly, the Grace of God concurring:) The fence and Bulwark they have been that have kept out both it and other Errours God knows how many; If the fence be removed, whether the Beaſts of the Common will not break in? if the bank be cut, whether naturally there be not like to be a return of former inundations dri-

driven and kept out thereby? is left to reaſonable judgement; we can but gueſs, God onely knows. This by the way: to return.

Our next impartial Councel we crave leave to take Maſter *Selden*, who ſeems to offer himſelf in his printed Declarations: Learned Councel indeed, and being Lay, and ſo altogether unintereſſed for benefit ever will be preſumed to ſpeak with the more indifferency: and, when truth and the ſtate of things permits, he comes up and fully home, as can be deſired. He fluctuates indeed in time as long as any, but ſettles with the more judgement at laſt, and as he that chooſeth and ſifteth his Corn hath lightly better bread then he that takes what comes in his way, or out of the full heap: So hee that firſt examines, and then judges. Crave leave then to ask his opinion, *Are Tythes juſtly civilly due?* Hee hath already declared himſelf in publick in the hearing of all the world. Take but the ſixth part of what he has laid down in his Hiſtory, and it may be abundantly enough. Or but Secure the Juriſdiction, and That, as has been often ſaid, is ſufficient, the reſt will follow of it ſelf, for which Caſt an eye back to what was ſaid before. Will Poſſeſſion do, or ſo much time as may create Præſcription? for this alſo he hath ſaid, and there hath been given from him enough, which may not here procure trouble by tedious repetition. Remember what he ſaid *was Clear Law*, and ſince *Edw.* 1. time a Parochial Right Univerſal. It is not more certain that he wrote, then that in way to his deſign of, An Hiſtory of What Had been, he lets fall enough for *Now due* and *the Right that is*: which bottome the reſult of his painfull diſquiſitions often ſettles upon. Theſe two are the chief, and their teſtimony given in upon record, more then publick which goes forth to All, and being in Books deſerves that of the Pſalm, *Their ſound is gone out into all Lands, and their words unto the ends of the world:* Perhaps may bee read and acknowledged in the Indies. Now after theſe it may be ſuperfluous to adde the other that offer themſelves, and

in

in no leſs publick way ſtill, *the Preſs*, that uſually ſpeaks with a thouſand voices at once, and is heard, to any diſtance, the Eccho may remaine to all generations; As, *W. C.* in his Tything Table, printed in the Queenes time, and re-printed often ſince, 'tis in the hands of all men, and rivels out the generall Subject into many particulars: Doctour Sir *Tho. Ridley*, who hath laboured not unprofitably in the ſame argument: Maſter *Hughes* of Grays Inne, His Book is called, The Parſons Law: and Judge *Dodderidge* (or *Bracton* the ſecond, for ſo I would compare and parallel their profound ſoliditie) in his, Compleat Parſon: More there are others, ſcarce any One man knows how many, and they all contribute their united and unintereſſed vote and ſentence hereto, proving ſometimes, but moſtly ſuppoſing a Right, which is more, though the two former I chiefly rely upon. Ask the next man met, and if he know any thing, I know he muſt know this, and will I believe give it in Co-atteſtation with All, Nor can hee approve himſelfe an Engliſh man that hath brow, (for brains he hath little or none, knowledge either of Diſcourſe or Experience,) that can upon deliberation deny it.

In his view of the Law, par. 3.

CHAP. XXXIV.

IT remaineth next, Whether any thing hath been *Done* accordingly? Men have thus interpreted *Laws*; but their *Sayings* how many, or confident, or grave soever, though bearded with authority, alter not the *Nature* of *Things*, The exhibition whereof in Deed and View is that Reall proof men most look upon in the World and more, beyond the strongest Opinion or best interpretation; and What has been then seen the effect or Work of these Word and Book-suppositions? I answer; as much as well can be supposed or imagined; with assurance enough too, even to the disposition and transposition of the tenth part of the wealth and Revenue of the land. For among All sorts of persons that had any thing, in All places, There is never a Parish in the Land, or Person of Cense and Possession, but the experience hereof has been given yearly in His estate, and submission to that power, that from one man to another created Right, according to received and obeyed Law: It was but Ask and Have, Seek and obtain, expect the season when the Course of Nature brought forth things in kinde, and take the tenth as it arose; None did *mutire contra* or resist or but obey. The Issue (as before intimated) was but Commonly either the Bounds, or Certainty of the Parish; If these two were well proved (whereof onely could be doubt) the rest came in of it self, and the force of these grounds of Law as before, so interpreted as now, carryed the Tenth fleece, the Tenth Lamb, the Tenth Lock, Heap, or Sheaf, &c. all upon a Supposition All was right, and this as often as the things grew Due and demanded. Nor needed the Plaintiffe (that his quality, though he might goe under another name) to cast out for any Law, a Combination of Which, and the whole of a sort, united and deeply founded

was

was always in his behalf (1) supposed: This was put into his Libell, *tam de Jure communi & Ecclesiastico, quam de antiqua, laudabili, legitimeq; præscripta consuetudine, jus percipiendi, recipiendi, & habendi omnes & singulas decimas tam majores, quàm minores mixtas & minutas infra Parochiam de N. provenientes, crescentes, renovantes, & contingentes, ad Rectorem Rectoriæ de N. spectat & pertinet, &c.* and this a set way as in the secular form of pleading upon Briefs, which were always the same, like the laws of the Medes and Persians, without alteration; Nor may we well suppose any errour to have crept in, or been admitted or retained Here, in that plea, which was a ventilation or exact discussion of the tenth part of the profits of the Kingdom. There is much both law and Constancy in those set forms, 'tis very hard to suggest or foist in any errour to those known inviolable pieces. to (2) raise or alter a Writ, requires and has had the legislative power of the Kingdom: Of the like certainty, use, evidence and inviolable firm constancy and immutability was (no doubt) the way of transacting things here: If we light upon truth anywhere, we may hope for it in those lines which have been so often handled and reviewed, and which have themselves handled and disposed of so much of every mans estate, as in the whole amounts to that part which is the tenth of every thing. Some of many would have found the fault, if there had been any, nor could the inquiry have remained unespyed, in that most men had their eye upon, and suffered by, But none did Here, Therefore it is very likely to have been good and Right All as Such have looked upon, and none been able to espy therein Errour or falsity.

Thus to the Cause have we subjoyned the Effect: To the Law before, interpreted now, the use and fruit in disposition of mens estates, Their wealth that dearly beloved of their souls with much patience being suffered to be transposed and change masters by its power, And sentences were to this purpose as usuall as tryals. According whereto followed no

(1) Now touching the discharging of tythes themselves, & the pleading them at the Common-law; It is to be observed, that they are things of Common right, and doe of Right belong unto the Church. And therefore though it be true, that before the Councell of Laterane, there were no parishes nor parish-priests that could claim them, but a Man might give them to what spiritual person he would, yet since parishes were erected, they are due to the Parson (except in certain speciall regular Cases) or Vicar of the parish: And therefore when you have a prohibition for discharge, (of the validity whereof, and when to take place, he is there speaking) You must consider it is a plea in bar against Common Right to a demand of Tythes which is a Common Right, though they be in severall Courts, as by a Release either in Deed or Law. Hobarts Reports in Slades Case, pag. 296.

(2) Stat. of West. 1. c. 34, 35, & 41. 13. Edw. 1. Stat. of Merchants, c. 1. Stat. of Quo warranto, 30. Edw. 1.

doubt execution; who knows any thing knows this by daily everywhere experience, and as before we might not ſuppoſe forms of practiſed law erroneous and deceitfull, So here, that they ſhould, being ſuch, have found ſo ready and univerſall obedience, or that a wrongfull ſentence ſhould have intruded to take place, eſpecially ſith to generall prejudice; Draining mens purſes of much of every thing, and they (the whole world) ſo fall aſleep, that no ſuſpicion was ſtirred up of the legerdemain; Nor ſo much as any outcry heard of ſo ſpreading and univerſall wrongfull incroachment. Surely no: There was no ſuch thing; but a Juſt ſentence upon due proceeding: Both *cauſe and effect, Rule and Order, Law and execution were according to Right*: and as in any other the Kings Courts, theſe temporal-ſpiritual things were orderly and legally diſpoſed of and ſetled Here, by that law, which ordereth, diſpoſeth, ſetleth, and *even Giveth all things*.

Upon all which would follow alſo one thing more, That if all theſe things be Thus, Not Colours but of ſubſtance and reality, If ſuch law have ſo paſſed and ought to be obeyed, and has, And to part with be now by vertue thereof Not *to Give* but *Pay*, *Debitum Juſtitiæ*, and of *Right Ought* (to the ſervice of God) not *Debitum Charitatis*, a bequeſt *of love and good Will*: Hereby is way made, not onely of bringing home theſe Dues ſafe and ſure to their Right owners the Juſt Claimers; but alſo of bringing home further all thoſe forceable exhortations to the payment of them in Goſpel-dayes, to Gods ſervice, even under thoſe Strong reaſons which were heretofore uſed by the Prophets and wiſe good men under the Temple & Law; And with us may be ſaid, *Give and Pay* theſe due *Debenturs* to the Chriſtian ſervice as wel and *upon the ſame grounds* as they heretofore uſed, & by which they were then urged to be paid. For they required them but as Due, Due to God, (*ſc.* for his ſervice) Due by their Law, Sacred in their Polity, and which Immediately came from God: Now although we do not ſo plead them as ſtrictly (here) due by any divine Law among us given on the Mount, or written with the finger of Gods hand, yet *they are* by that Law: and Sacred too, and apportioning them to God, that is his ſervice too, which, as before giving them, is ratified and confirmed (as all Juſt powers and Laws are) by him that dwelleth on the Mount, who approves and ſets to his ſeal to be Juſt and Good, whatſoever Orders, Ordinances, Laws or devices his people (as ſo many additionary, explicatory, or By-laws for the good, peace and order of the place where they live, not croſſing the Common) ſhall make for eſtabliſhing and perpetuating his honour by means of their own created Juſtice, and ſo a kinde of Divine, and certain, though

though Mediate and conſequentiall way of confirmation they have from the powers above ſtill; At leaſt ground enough to ſay in the ſenſe of heretofore, (1) *Give the Lord his Due with a good eye, and Conſecrate thy tythes with gladneſs; Give* (yea Pay) *unto the moſt High according as he hath inriched thee, and as thou haſt gotten give with a good eye*; that Law which is in a ſenſe his Sacred law hath commanded it: For, (2) *All the tythe of the Land, of the ſeed of the land, or the fruit of the tree is the LORDS (Now) Holy to the LORD: And, concerning the tythe of the Heard or of the flock, whatſoever paſſeth under the Rod, it is now holy to the Lord likewiſe:* Therefore (3) *thou ſhalt truly tythe all the increaſe of thy ſeed, that the field bringeth forth year by year,* and (4) *Bring All into the ſtorehouſe, and try whether the Windows of heaven ſhall not be opened* for recompence. *My* Tythe into my Storehouſe: for (5) *Behold they are given,* (If not I have given, I have ratified their gifts who have given them) *to the Levites of the* New-Teſtament, *for the ſervices they ſerve in this tabernacle of the* Chriſtian *Congregation. Moſes* ſaid, Exod. 22. *Decimas & primitias non tardabis offerre Domino,* as in the Old Latin: And King *Alfred* ſays, *Thine Tything-ſcot, &c. give thou to God,* in his tranſlation and impoſition of that law upon us, (which our *juſt government,* and by conſequent *Our God* approveth:) *K. Ethelbert* ſaid, *K. Offa* ſaid, *K. Ethelwlph, K. Edmund, K. Edward* ſaid ſo (both the elder and younger on this and that ſide the Norman turn) beſide other, and it hath been digeſted, received, approved obeyed & practiſed by in our (6) *Sacred* Commonlaw, if I may ſo ſpeak, that they Muſt and ought: And ſo *We* as *They* require Them, in *the words of Scripture, the ſame Words* as They, and to the *ſame generall end,* upon *the ſame ground* of *a kinde of Engliſh Sacred-Law.* Pardon that Epithete, and admit a Juſtification: As ſuch I look upon and May call all thoſe which being Civill and Common as *Sanctions even with us* have a touch as it were and Derivation from God, and ſo All Sanctity or Sacredneſs cannot ſimply be abſtracted from them. As the Wiſe, and in his memory ſo much reverenced Chancellor *Forteſcue* averred and juſtified

(1) Eccluſ. 35. 10.

(2) Levit. 27. 30.

(3) Deut. 14. 22.

(4) Mal. 3. 8.

(5) Num. 18. 20.

(6) Leges Sacratiſſimæ, quæ conſtringunt hominum vitas, intelligi ab omnibus debent. Cod. de leg. l. 9.

to

to our young *Edw.*4. King *Henry* the ſixth his Son in his baniſhment, making every Lawyer a kinde of Prieſt, and ſo far forth officiating in his Cure, as he duely and reverendly gives forth the things of this Sacred Juſtice and Law. It has place where he is counſelling him not to regard Military exerciſes alone, but to inrich his minde with nobleſt indowments of knowledg and piety, ſetting for his pattern, The Prince of Iſrael, who was (1) councelled *to keep always a copy of the Holy law by him, and to read therein all the dayes of his life, that he might learn to fear* IEHOVAH *his God, &c.* Yea, (2) anſwereth the Prince, This wel concerned *Him*, for thoſe Laws had to him another tincture of Divine authority which to us is wiped of, having none of that high qualification. No, not ſo neither (replyed he) *as to ſanctity we are not without All law unabrogated: for all humane laws are to thoſe, whoſe they are*, Sacred *from the definition.* For *what is a law* it ſelf, but *Sanctio Sancta jubens honeſta, prohibens contraria*: (which (3) he might borrow from the Civilian) *A ſacred* (4) *ſanction, bidding what Good is, forbidding the Contrary? and that muſt needs have ſanctity in its nature, into whoſe definition it is wrought and embroydered: And therefore the Art of adminiſtring thoſe laws makes us Prieſts: for what is a Prieſt but he that miniſters in Sacred matters, teaching holy things? We doe ſo, we give out ſacred Juſtice, There-*

(1) *Deut.* 17.18, 19.

(2) Hæc ut audivit Princeps, erecto in ſenem vultu, ſic locutus eſt. *Scio*, Cancellarie, *quòd liber Deuter. quem tu commemoras, ſacra ſcriptura volumen eſt; leges quoque & cerimoniæ in eo conſcriptæ, etiam ſacræ ſunt, a domino editæ & per Moyſen promulgatæ: quare eas legere ſanctæ contemplationis dulcedo eſt. Sed lex ad cujus ſcientiam me invitas, humana eſt, ab hominibus edita, & tractans terrena: quæ, licet Moyſes ad Deuter. lecturam Reges Iſrael aſtrinxerit, eam per hoc reges alios, ad conſimiliter faciendum in ſuis legibus, coarctaſſe, omnem effugit rationem; cum utriuſque lectura non ſit eadem cauſa.* At Cancellarius, Scio, &c. Scire igitur te volo, quòd non ſolùm Deuter. leges, ſed & omnes leges humanæ ſacræ ſunt, quo lex ſub his verbis definitur: *Lex eſt ſanctio ſancta, jubens honeſta, & prohibens contraria*: Sanctum enim eſſe oportet, quod eſſe ſanctum definitum eſt. Ius etiam deſcribi perhibetur, quòd illud eſt ars boni & æqui, cujus merito quis nos Sacerdotes appellat. Sacerdos enim quaſi Sacra dans, vel ſacra docens, per etymologiam dicitur, quia ut dicunt, Iura, leges ſacræ ſunt, quo eas miniſtrantes & docentes, *Sacerdotes* appellantur. A Deo etiam ſunt omnes leges editæ, quæ ab homine promulgantur; Nam, cum dicat Apoſtolus, *quod omnis poteſtas à Domino Deo eſt*, leges ab homine conditæ, qui ad hoc à domino recipit poteſtatem, etiam à Deo conſtituuntur, dicente authore cauſarum (*Ariſtotele*) Quicquid facit cauſa ſecunda, facit & cauſa prima, altiori & nobiliori modo. Quare Ioſaphat, &c.

Ex quibus eruditis, quòd leges, licet humanas, addiſcere, eſt addiſcere leges Sacras & editiones Dei, quo eorum ſtudium non vacat à dulcedine conſolationis Sanctæ. *Fortaſſe. de legibus Angl. cap.* 2, & 3.

(3) Vid. Gloſſ. lex eſt. ad Inſt. 1. de Iur. nat. & gent ſect. 4. & Gloſſ. non faciendorum. ad ff. de legibus Senatuſque. lib. 1.

(4) Quomodo leges ſanctæ, vid. ff. de rerum diviſ. & qualitat. l. 9. ſect. 3.

fore

fore We are Priests. And all Laws are from [1] *God*, though publiſhed by Man: *For whereas* [2] *the Apoſtle ſaith, All Power is from God; The Powers that are, are ordeined by Him.* Law made by ſuch derived Authority, derives farther, and impreſſes the ſtamp of Authority from the firſt Cauſe through All, for as much as, *Whatſoever is the Cauſe of a Cauſe, is alſo a Cauſe of the thing Cauſed.* Whence [3] *Joſaphat* to his Judges, Ye do Gods work, *Ye judge not for Man, but for the Lord.* So that Every Law is then Holy, Every Stateſman may look upon himſelf as a kinde of Prieſt, every Magiſtrate a [4] kinde of Miniſter of Holy things, (Their Study gives them ſuch, though their Trade may be unrighteouſneſs) and no word can better fit a dying Patriot then theſe of *Eleazar*, 2 *Mac.6.* ὑπὲρ τῶν σεμνῶν καὶ ἁγίων νόμων ἀπυδυναπίζειν, to be ready to die for the *ſacred* and *venerable Laws* of his Country.

Thus then All Laws are Sacred, as derived from God, and backed with his authority, though made by man, and ſo ours, and ſo that which is of this ſort in particular: which occaſions fit and full application of thoſe Texts of Scripture in the juſt import of the words and their full vigour of ſenſe to have Tythes brought in, as thus Scripture now requires (theſe Acts of State and Right ſuppoſed, which alſo are) and they ſin againſt that Sacred Law, yea a double ſacred Law, *Mans and Gods*, (in Mans or above Mans, having Mans under it,) who do not Pay. Some queſtion hath been hitherto of the [5] *Jus divinum*, whither now Any ſuch be of force to bring in this Revenue of the Temple among us? and there be that affirm as well as that deny, as they finde light or darkneſs in the Letter of the Scripture (which, immediately, they rely on) in their apprehenſions: But this ſtrife may now be

(1) πᾶς ὅτι νόμος εὕρημα μὲν καὶ δῶρον θεῶν, δόγμα δὲ ἀνδρώπων φρονίμων, ἐπανόρθωμα δὲ τῶν ἑκουσίων καὶ ἀκουσίων ἁμαρτημάτων. ff. de leg. Senatuſq; L.2.

(2) Rom.13.1.

(3) 2 Chron. 19.6. *God is with you in judgement.* So Exod.18.19. *Do ſo and God will be with thee.*

(4) Θεοῦ γὰρ διάκονός ἐστι σοὶ εἰς τὸ ἀγαθόν. Rom.13.4 Dei enim miniſter eſt. *And*, Miniſtri Dei ſunt. ver 6.

(5) *Albeit we be be now free from the Law of Moſes, and conſequently not thereby bound to the payment of Tythes; yet becauſe* Nature hath taught Men to Honour God with their ſubſtance, *and Scripture hath left us an Example of that particular proportion, which for Moral Conſiderations hath been thought fitteſt by him whoſe wiſedom could beſt judge; Furthermore, ſeeing that the Church of Chriſt hath long ſithence entred into Obligation; It ſeemeth in thoſe dayes a Queſtion altogether vain and ſuperfluous, whether Tythes be a matter of Divine Right, Becauſe, howſoever at the firſt it might have been thought doubtfull, our Caſe is clearly the ſame now with theirs, unto whom St. Peter ſometime ſpake,* While it was whole, it was whole Thine, *When our Tythes might have probably ſeemed our Own, we had Colour of liberty to uſe them as we ſaw good; But having made them His whoſe they Are, let us be warned by other mens example what it is* νοσφίσασθαι, *to wash or clip that Coin hath on it the mark of God.* Hookers Eccleſ. Polit. l.5. Sect.79. p.489.

well

well ſtinted, unleſs for double ſtrength among us, for as much as in a certain clear, but mediate and conſequent way (the Act of Man having given, and the Authority of God above confirming what is done below) that divine print reaches through no doubt in the way hath been ſhewed, and cannot but ſtamp ſomewhat of heavenly and the Supreme Power upon the Acts that have paſſed of Men, and ſo for *the Commandments ſake*, yea for that is by derivation, approbation and undoubted confirmation *the Divine Commandments ſake*, they are now Due and muſt not but be paid, as in *Iſrael*. *Rebus ſic ſtantibus*, or as things have paſſed and now are and remain, they are (I ſay) unqueſtionably *Thus due by Divine Right*. For the *Magiſtrate* is *Gods* [1] *Miniſter*, Every juſt *Law His Ordinance*, *Vox Legis*, *Vox Dei*, and every ſyllable and ſound thereof quickned with an additional ſpirit of divine infuſion, (according to our Scriptures, and as we have from *Rom.* 13. 1 *Pet.* 2. and other places.) And ſith then here the Magiſtrate and the Law have proclaimed for them, whither they be due as in *Moſes* to *Iſrael*, by the Text of *Leviticus*, or by vertue of any Goſpel, or the Epiſtle to the *Hebrews*, ſeems not ſo much material, at leaſt not neceſſarily conſiderable, for as much as though this were conſiderable at firſt, yet now they are Here faſt enough by what the Magiſtrate has done for them by his Vicarious power and ſubſtitute authority *The Powers that are are ſtill ordeined of God*, as was alſo ſaid before; He ſticks not to ſet to his Seal to what has been orderly paſt in lower Courts, approving and commanding what they prudently and juſtly do, and it ought not, for Gos ſake, but be obeyed: ſo that whether the general take hold or no, or univerſal, that Where ever the Goſpel is preached this ſhall be part of its obedience, and the Labourer is worthy of this hire, by divine Right; We have here a ſure word of Righteouſneſs, enough wherunto we may do well to take heed, as unto a light ſhining in a dark place, and if Not the General Divine Law, *Decima ut Dives fias*, or, *Non tardabis offerre Deo Decimas*, yet the other General is topical, and directly binding in our Meridian and Clime, *ſc.* that we muſt *Do juſtice*, That we muſt [2] *Render to every one his Due* for the Lords ſake:

(1) *If ane one ſhall prove troubleſome and ſtir Tumults*, Conſeſtim opera ac diligentia famuli Dei (meipſum dico) pœnas ſuæ inſcitiæ dabit: *ſays* Conſtantine *the Emperour*. Theodor. Hiſt. Eccleſ. l. 1. c. 20.

(2) Rom. 13.

[1] *Whatſoever*

[1] *Whatsoever is just* as well as *whatsoever is Pure*, [2] *To Cæsar the things that* are His, *and to God the things that are Gods*: And Thus *The Law of God*, (This Law) is thus brought about as quickning and so confirming *Mans*, and the duty hereby to Us *moral*, even to every English Christian, because This is sure such and most undoubtedly, [3] *That which is just and right, That* O Christian *shalt Thou do*. So the thing be brought about, no great matter which way; As if the Arrow hit the Mark little inquiry how it came thither; Now Divine Authority backing (of which there is enough,) and seconding humane Ordinances, The rest is easie, and unless for double strength (as said) we have not so much need to inquire for a Divine Letter, because we arrive at the same point safe and sure in the other way of Humane: for if Man have settled, and God commanded to be paid, He have given, and the Magistrate, who is Gods Vicar, allow and injoyn payment; Now even for Conscience sake that may not be omitted, And whether the Scripture or Nature say any thing in the Case particularly home, They say enough in establishing humane Ordinances, (which will bring God along with them,) and Man for God must not but pay what Man has settled for Gods Commandment sake. So in this (new) way here is *Jus Divinum*, or Divine Right still Mediate and Consequential, but sure and certain, which perhaps may not be in *Virginia* or *New-England*, where the Gospel may be yet in full vigour, or in *Madagascar*, or *Japan*, if the same holy Rule should there finde obedience; The Climate alters, and some particular things done *Here*, which (I think,) *There* have not, and thence indeed *This difference* and *Our preferment*: And suppose they, (that is either those remote strangers, or our Brethren at home that Rely on Divine Right *in scriptis* or the very Letter of the Law,) should lose all with that Letter of Scripture, and their proofs falling short from Text or Reason, they therewith fall short of all proof, yet *in this Our way* we keep enough in derivation of Consequence, and by Pre-advantage of a Civil Title granted and settled, we gain also another of another sort, Divine but Mediate, accumulate and lasting, even when the immediate and literal is (in reality or supposition) taken away

(1) Phil. 4 8.
(2) Matth. 22, 21.
(3) Deut. 16. 20.

In ſhort, we need not doubt of *a Divine Right, Here, with Us*, while there is *a humane Ordinance prevailing*, and *a Divine inſpired* [1] *Apoſtle ſpeaking from God*, we muſt *Obey every Ordinance of Man for the Lords ſake:* The firſt of which has had attempt of plentifull proof, ſubmitted to judgement, and of the laſt no Chriſtian admitteth doubt. Yet ſpeak I not any of this laſt to evacuate or infirm that or their opinion who go another way to ſtabliſh the opinion of Divine Right by their fair and ſolid Arguments from the Text, as if I would withdraw mens mindes from the love and eſtimation of their Gold, pretending here is Silver, and then if this fail after a while they are wiped of both, and have to truſt to Neither: No, theſe are *ſeverall*, and this *Another*, but *not a contrary* or *croſs way* pointed to, they do *not juſtle* but are *very well and fairly conſiſtent and compoſable one with the other*, and this prop of Wood may help, if that pillar of Braſs fail (or be miſplaced,) This ſtring may hold, if that chance to break, or perverſe men will not be held by it; And in this *additional or ſupplemental way* it may be acceptable alſo to thoſe who are more ſtrict for the divine Right immediate, which, be it what it will I keep promiſe of within the *Circle of mine own Sphere*, Be that, or be it not, This I believe is, and this advantage enough hereby if we have it. To conclude, let the things be conſidered as before alleadged from the parts of the Law diſperſed, Councel interpreting, and (which is moſt material to Expoſition,) the practiſe and Seen Force of the Law *thereby*, and we cannot from them I think, but conclude, 1. A certainty of Civil Right, and by that bottom of rooted Law, that gives all things. 2. A probability of Divine Right, mediate and conſequential. At leaſt the firſt, and with much aſſurance, *Id quod erat demonſtrandum.*

1) 1 Pet. 2. 13.

CHAP.

CHAP. XXXIII.

IT remains for inference and application to the juſt conſcience, that every ſober and well-meaning Honeſt man quietly and orderly compoſe himſelf then to his duty in obedience, and if this burden be duly and fitly laid on, & on Him, to take it up and go away with it as contented, not wrangling or quarrelling to his due ſhame & abominable ſin, as well as manifeſt injuſtice, & dangerouſly ſeditious diſturbance, but be ſatified with his own, & give out to others with willingneſs what is theirs: He acknowledges and muſt acknowledge, and not His. My Lot may be of the Receiving part; If it be, I may juſtly expect *mine own*, & require it, & demand it, and unleſs my Chriſtian perſwaſion be againſt going to Law for any thing (which has colour from 1 *Cor.*6.1,6,7.) if it be denied, as for any other Right, ſue for it. Or if my lot be on the paying part here I have both leave and duty, not to [1] murmure or complain, ſhift or evade, but meekly, gently, and Chriſtianlike do what belongs to me, reckoning my ſelf no Honeſt man, unleſs I have thus much Honeſty to be Content to give every man his Due, yea not as the Ox or the Slave, meerly for fear of the whip, but from forwardneſs and readineſs, quickned by the inſpiration of my Religion, whatſoever I do (unto the Lord or unto Men) doing it Heartily and willingly, as knowing I am bound to keep my rank ([2] τάγματι) not onely for wrath but for Conſcience ſake. For [3] *God loveth a chearfull Giver*, and a chearfull Doer, and it is the great commendation of Chriſtian Religion that it makes or *leaves* none ſlow or indifferent in any good Duty, but addswings to the

(1) *Do all things without murmurings and diſputings, that ye may be blameleſs and harmleſs, the Sons of God, without rebuke in the midſt of a crooked and perverſe generation, among whom ye ſhine as Lights in the world, holding forth* (thus) *the word of life, that I may have comfort of you in the day of Christ,* and Iude ver. 16.

that I have not run in vain, nor labowred in vain, Phil 2.14,15,16. *See alſo* 1 Cor 10.10 *Sure this is a Goſpel ſin.* (2) Rom.13.1,5. (3) 2 Cor.6.7.

weary or heavy doubting ſoul, more readily, effectually, and chearfully to do every thing ought to be done *for the Lords ſake?* 'Tis ſaid there are ſome whoſe Conſciences will not give them leave to iſſue forth theſe Dues, according to legal Obligation and and all juſt expectation, even as juſt as any is in the world; But I ask almoſt in the ſame words, whether their Conſciences will give them leave to pay their Dues? A Juſt Aſſeſment? Stated Rights? A Quit Rent, a Fine, a Releif, or any Juſt Impoſition? Set aſide *Leviticus*, *Malachi*, the Epiſtle to the *Hebrews*, yea the whole Bible: This Rent-charge as it were, *is ſo due* by Civil Juſtice; will they now be Honeſt Men? If they anſwer but Roundly and home to this, I have as much as I deſire. Will their Conſciences give them leave to pay their Debts? what is doomed ſuch? If this be not a Debt to the due Receiver, a yearly profit iſſuing out of their Lands to anothers uſe by Law, Nothing is due here in *England*, and for this is the ſtrength of the whole Treatiſe going before. Thou ſayeſt, *I cannot prove Tythes due by the Law of God*; I went not about it, but if I can by the Law of Man, this is enough for thee: thou replieſt, *Leviticus is abrogated, the Hebrews dark, Abrahams and Jacobs but examples*; But wilt thou pay a Cuſtome, or Toll, or Tribute, or legal Taxation? Is a Rent-charge due, or Relief, or Quit-Rent? By what Obligation ſoever thou ſhalt confeſs There, by the ſame and of equal ſtrength I will make good my Plea here; Where art thou now? Wilt thou pay both or none? What but Engliſh Sacred Law gives the one? and the ſame gives the other: Pay or deny, both or neither, the equity is of equal meaſure, ſtrength, and evidence for both together: O Chriſtian, let not the World deceive thee: Let not the God of this World blinde thine eys: If thy Covetouſneſs hinder not, thy Conſcience may well ſerve thee to pay thy Dues, yea, *would Conſtrain* thee, that is *more then Permit*, for true Religion does more then *Give leave*, *Command, and Injoyn* men to be Juſt and Righteous.

Nor let any one ſay, *Theſe are Trifles, far below the height of Heaven: May not a man keep a good Chriſtians Conſcience to God without trombling himſelf with theſe Levitical Ceremonies?*

monies? Hearken man, This is a part of our Moral Righteouſneſs, as things are Now with Us a part of Neceſſary Juſtice; A man can be with Us No more Unrighteous or Unhoneſt then he can here make light of this part of his legal Duty. Nor let him ſay, *I have given my name to Heaven, I have weightier things in conſideration, Muſt I interrupt or pull down my higher thoughts from devotion faith and Spirituals to theſe, which when a Phariſee boaſted exact obedience of, he remained but a Phariſee?* O Good Man value things as they are; Thou wilt not neglect Earth I hope in order to Heaven, or ſuffer thy Religion to leave thee Not Honeſt or Unjuſt; Muſt thou not deal Truly in theſe lower things before thou art fit to be truſted in higher? Or is Moral Juſtice an Heathen vertue, meer ſtranger to the power of Godlineſs, and Not regarded at all by the God of the Chriſtians? Does not thine own Saviour ſay, (Believe not me, but believe Him, and believe me but as I do with fidelity and truſt diſpenſe the the Truths of, for, and from Him,) that [1] *He that is faithfull in the leaſt is faithfull alſo in much; He that is unjuſt in the leaſt is unjuſt alſo in much*; If *therefore ye have not been faithfull in the Unrighteous Mammon*, who *will commit to your Truſt the True Riches?* Nor let any further excuſe with the pretence of the Nature of Things, *He hath weaned himſelf from theſe lower to better: Faith, hope, praiſe and prayer, &c. do ſo take him up that meaner things have leſs regard juſtly, He is for the Heighth of Holineſs.* And I will believe him as ſoon, as that, He hath climbed the Pinacles of *Solomons* Temple, who is ſcarce got up the ſteps of *Solomons* Porch, That he that is Unjuſt can be Holy, or that Good man fitted to be a Citizen of the new *Jeruſalem*, a Free-man of the Kingdom of Heaven, Who wants neceſſary qualifications to live in an honeſt, well-governed Commonwealth on Earth. Shall Heaven be furniſhed out with Diſhoneſt men? or the legal Members of that Citie be Defrauders and Deceivers? Does not the [2] Apoſtle ſay, (What can be plainer? *Be not deceived,* (Some are apt to think ſo,) That *the Unjuſt, Idolaters, thieves or covetous ſhal ever Inherit the Kingdom of God. And ſuch were ſome of you, But ye are now waſhed,*

(1) Luc. 16. 10, 11.

(2) 1 Cor. 6.

(or elſe had no hopes there) *but ye are cleanſed, but ye are*
Apoc. 22.15. *purified, but ye are juſtified. Without are Dogs* and evil Doers. Thou art apt to condemn a Thief or a Robber, the cry of the whole Countrey is againſt Him, What! He that grows Rich by ſpoil, takes another Mans Goods! I confeſs, his crime is ſomething more, but that a part, and his whole ſin, and
Rom. 14.22. wilt thou take the croſs to that of the Apoſtle, *Bleſſed is He*
Chap. 2. 1. *that condemneth not himſelf in the thing that he alloweth; Thou*
Iohn 16 9. *that Judgeſt another*, Doeſt *Thou the ſame thing?* We are bid to *make us friends with the Mammon of Unrighteouſneſs that when need is, we may finde Everlaſting ſuccour:* Sure this by Juſt dealing at leaſt, I believe more then by unjuſt or unneceſſary Giving. Is not Unrighteouſneſs ſin among Chriſtians? or True dealing, to Give every One his own, onely a ſuperfluous part of Goodneſs? Welfare then *Achab* and
2 Sam. 12.4,5. *Judas*. That Oppreſſour had too ſevere a cenſure in *Nathans*
Luk. 23.42. Parable for *taking away the poor mans Lamb*, and the Thief upon the Croſs committed a work of ſupererogation in re-
Phil. 2. 18,19. penting his theft in the way to his Paradiſe. Saint *Paul* needed not have cared for *Oneſimus* debt, nor the ſons of *Jacob*
(1) Gen. 42.35. (2) Luk 19. 8. excuſe the ſtealing of the (1) Plate, (if it had been ſo) (2) *Zacheus ſtood forth*, and out of ſuperſtitious piety Gave to the poor, and *if I have wronged any, I reſtore him four-fold.* O no, Theſe vile things of the Earth have Heaven at one end,
Chap. 12.33. We *may make us bags that waxe not old*, or lay up treaſure
Mat. 25. 35. &c. in Hell with them as uſe or abuſe them; Chriſt will pronounce ſentence upon Thoſe *Diſpenſations* at the laſt day, and if we ſhall be puniſhed for not being merciſull, what farther if we be unjuſt and injurious? Is the Word our Rule! Brother Chri-
Act. 26.27. ſtian, *Believeſt thou the Scriptures?* If thou do, ſtand faſt
2 Tim. 1.13. to thy ground, *Hold faſt the form of ſound words as they were delivered* and thou didſt receive them, Make good thy faith alſo in thy works ſeen before men, Let thy life be a juſtification of thy belief, a counterpart or exemplification of Thy book of Religion. Be aſſured of this, there is not held forth any where in the world a better picture of *An honeſt Juſt man* then in thoſe ſacred leaves is deſcribed and painted out to the life, Which every believer is bound to be by his Religion;

Obedi-

Obedience or Exhibition of himself such must render him (the Childe of God) such a Just Dealer therewith, And thy necessary conformity to that Law shall make thee *A Pattern to all the World for Heathen Honesty.* This is a part of that μεταμόρφωσις or *Transformation* in difference from that Conformity to the unjust sinful world before, *Rom.* 12. 2. Dress thy self by this glass, and thou wilt not count thy self ready without this habit, Adorn thy self by these directions, and thou must put on this Moral qualification, ('Tis a part of the putting on the Lord Jesus Christ, *Rom.* 13. *ult.*) nay, shine bright in it, *abounding in this work of the Lord*, or thou art no warrantable Christian. 1 Cor. 15. 58.

Shall this be now disputed or doubted? Shall I stain the reputation of Christian Doctrine by this that it has not as clear as day, *that every Proselyte thereof must give every man his due?* or, it may leave me as wilde and conscience-less as a Thieving Tartar or wilde Arabian that takes what he can get, and parts not with what he can keep? I may not sit down with, *Being just onely*, for the power of my faith brings about and should bring *in* all parts of *Civil Justice* by a *Stronger Spring* then is to be found again in the world, I must doe Right *for Conscience sake*, I must do No Wrong for fear of *Heaven* seeing me, (*how should I do this Evil, and sin against God?* (as *Joseph*,) I must not take or withhold, or retain, or not give out what belongs to another (*sub pœna ignis gehennæ*) under the most intolerable penalty of assured and believed Hel-fire. Come home more near we pretend to our age of Light: Have we heard so many Sermons, waited upon God so long in his Ordinances, Sanctified every returne of his holy Sabbath, Wrestled with him as *Jacob* in daily long Prayers, set aside so many whole speciall days for Fasting and Humiliation to seek the Lord while he may be found, and call upon him while he is not utterly gone to the Indians, Tartars, or other Nations, that yet know not God, and shall we arrive at the last with all this pains at this point of perfection, that we are now come to doubt whether wee may do right or wrong! whether we may equall the injustice of *Entring the field of the fatherless, whose revenger is Mighty!* Gen. 39. 9. Prov. 23. 10. *And Therewith compare what before*, pa. 37. & pa. 244.

Mighty! whether we may not invade, covet, take, hold, or withhold, what has been ſhewed to belong in Right to another! If it Do, we will yet have it, and hold it, and not part with it, though (if we believe our Bible,) we know we ſhall be burned in the ſoul for it, with a coal of *Ignis fortis*, or rather of *Ignis inextinguibilis*, that *fire of Hell will never be quenched!* Do we continue to boaſt of light from Heaven, the Sun ſhining clear in the Firmament by the allowed uſe of Scripture, and the bright beams thereof diſperſing and darting their full power daily from the Pulpit ſuch a long day as has outlaſted the years of many generations, with ſo many repeated impreſſions and diſperſions of Numberleſs Numbers of Engliſh Bibles, that it hath been an amazement to ſome that live neare the well-head whence thoſe waters of the Sanctuary flow, and others conjecture the Enemy buyes them up to burn them in private, ſith in publick and for Heretical yet he cannot, And ſhall the Engliſh fruit of all this promiſing ſeed time be, our doubts come out ſeriouſly in any of the ſcandalous ways before, or our carnall hearts have admitted no operation to obedience in ſuch clear and undoubted evident matters, But alaſs, ſome part of our Neighbours Due incloſure we would take in and hedge to our own, though we make bold with the hedge of Gods Law for it, His corruptible wealth we covet, His ſilver or gold we take or withhold, (or what has equall right) His Mammon of unrighteouſneſs, as we account, we *tantùm non* ſacrilegiouſly ſeize upon for our ſelves, and to prevent his idolatry, we put it into a private place, as it were, that we Our ſelves may worſhip it! We love it, we deſire it, we keep it, we cheriſh it, we will not part with it, though God himſelf become interceſſor for Juſtice, and ſtand as it were at the Magiſtrates elbow, backing his command with a higher acceſſory Authority, *Nec vox hominem ſonat*, there is ſomewhat more then meerly humane in that loud and publicke voice of *The allowed Law*, at leaſt *Aliquid Divini*, which God uſes to impart to that ſubſtitution of himſelf and Vicarious power, which *whoſo reſiſteth, reſiſteth the Ordinance of God, and they that do ſo reſiſt, muſt look to receive to themſelves*

Rom. 13.2,

ſelves damnation. What ſhall we ſay to this, if the enemy ſhould lay this to our Charge? (as be we ſure God will be our enemy, and put it home ſeverely unleſs we repent and amend.) Is this a part of our Goſpel-righteouſneſs! a fruit of our holy Religion! that will conſiſt with our Juſtification by Faith, and ſhall we furniſh him with arguments or ſophiſmes enough againſt that opinion or the conſequents thereof by Such a Life! *While we have the Light*, doe we thus *walk in the Light?* giving him occaſion to ſay, Theſe are the works we ſee they do, (*By their fruits ſhall ye know them,*) We know it of them, for we ſee it: This is the Harveſt has been long a growing, and the fruit they reap among themſelves of their many years uſe in freedome *of their Engliſh Bible.* Now the Lord rebuke thee Satan, that thus ſitteſt between the lips of ſeduced benighted men, to blaſpheme the ways of the living God, or the courſes or things they do not or will not underſtand, not diſtinguiſhing between Heavens bleſſing and Mans abuſe, the fruit of Gods Ordinance and Mans Corruption; and the ſame God give his ſervants grace to carry themſelves ſo inoffenſively in word and deed, that no merit of their miſdemeanour may hereafter give occaſion of ſuch reproach, but behaving themſelves *in all things as the ſervants of God*, and *having a good conſcience*, *whereas men ſpeak evill of them*, as *of evill doers*, *They may be aſhamed* that *falſly accuſe their good converſation in Chriſt*; *having* alſo *honeſt converſation among the Nations of the world*, that they *may by good works they ſee Done*, *glorifie God in the day of viſitation.* This ſure, the Engliſh Bible is a rule good enough of all righteouſneſs, *profitable for doctrine, reproof, correction, inſtruction, that the Man of God may be perfect*; the light thereof ſhines from above and guides thereto, and the end of its obedience undoubtedly everlaſting life. Which bleſſed Book ſith ſo lighted on again, let us a little ſit ſtill to turn the leaves thereof onely, it may fit our cloſe to end with God, perhaps we may there meet with ſome Angel of His in the way, with his ſword ready drawn in his hand to ſtop our Career in ſtubborneſt reſolution to go on in the ways of our own heart; I will ſuppoſe clear what proved

John 12 35.

Mat. 7. 16.

1 Pet. 3 16.

Chap. 2. 12.

2 Tim. 3 16, 17.

that the Miniſtery has right, (as things ſtand) right, and their ſpoliation is wrong; and then O brother Chriſtian, Go along with me, and ſee what thou wilt ſay to thine own believed, received, inſpired, and that thy ſelf takeſt for Goſpel (1) Gods-ſpel,) thy revererenced Divine Oracles.

And firſt, doth not that Heavenly Law forbid generally All (2) Iniquity, (3) Oppreſſion, (4) Theft, (5) Fraud, (6) Injury, (7) Robbery, (8) Surreption, Extortion; and that (9) *No man go beyond* and *defraud his brother in any* (worldly) *thing, for God is of all ſuch things the Revenger* moſt ſevere, *as is everywhere ſaid and teſtified!* Does not one of the Tenne Commandements (which children learn in their Catechiſmes) appoint, Thou ſhalt not take what is anothers, *Thou ſhalt not ſteal.* And mayeſt thou then pervert, ſuppreſs, withhold, detain, and keep to thy benefit what belongs to another, and tends to his impoveriſhment as well as ſtealing, perhaps to his ſtarving, certainly to the Wronging both of himſelf and family? Is this no ſin in thy Chriſtian judgement? —Doth not another of the ſame Laws ſay, Thou ſhalt not Covet! What? thy Neighbours Houſe, Wife, Servant, Oxe, Aſs; and that All? Is it not as well his Sheaf, Lamb, Fliece, Apple, or Egge? for the reaſon is the ſame of both: Or, doeſt thou think God will be ſo pinned up in his holy and juſt intentions againſt All wrong to ſome ſtraitning interpretations of thine, as may leave Thee loop-holes open, evaſions or ſhelter for in any thing thy wretched Covetouſneſs? Be not Deceived, God is not mocked; To *covet* is the *ſin*, not *This* or *That*, 'Tis the *injurious intent* not *greatneſs or kinde* of the object of that injury is forbidden; And to make all ſure, the cloſe windes up all in the largeſt and moſt comprehenſive Univerſality, Not this, nor that, but, *Nor Any thing that is thy Neighbours.* Look upon them again: Theſe are two of *Moſes* Commandements, of Gods Laws, ('tis much in ſo ſmall an Enchiridion or Summary of duty, the ſame ſhould

(1) So R. Veſtegan *compounds and derives that word: as if it were God-ſpell Spell* a Myſticall Speech, or an Oracle, *Antiq. pa.* 223.
(2) Exo 29. 5. Pſ. 5. 5. ——28. 3 ——36. 2. ——37 1. ——66. 18. Eccleſ 3. 16. Eſ. 5. 18. ——57. 17. Matth. 17 23. 2 Tim. 2. 19. Tit. 2 14.
(3) Exod. 22. 21. ——23. 9. Pſal. 12 5. Prov. 14. 28. ——22. 16. —— 28. 3 Ier. 7 6. Ezek. 22 7. Amos 4. 1. Mich. 2. 2. Zechar. 7. 10 Iam 2 6.
(4) Exod. 20. 15. Lev. 19 11. Deu. 5. 19 Pro. 30. 9. Ier. 7 9 Huſ. 4. 2. Matth 15. 19. ——19. 18 Mar. 10. 19 Luk. 18. 20. Rom. 2. 22. Chap. 13. 9. Eph. 4. 28. Rev. 9. 21.
(5) Lev. 19 13. 1 Sam 12. 3, 4. Mar. 10. 19. 1 Cor. 6 8. 2 Cor. 7. 2 Iam. 5 4.
(6) Iob. 19 7. Ier 22. 3. 13. 1 Cor. 6 8. Col. 3. 25.
(7) Lev. 19. 13. Pſa 119 61 Pro. 21. 7. ——22. 22.
Will a man rob God? yet ye have robbed me. But ye ſay, Wherein have we robbed thee? In Tythes and Offerings Ye are curſed with a Curſe, for ye have robbed me, this whole Nation. Mal. 3. 8, 9.
(8) Exod 22. 12. Matth 23 25. 1 Cor. 10, 11. ——6. 10.
(9) 1 Theſſ 4. 6.

finde

finde a double place by prohibition and repetition) engraven on Tables of ſtone, but a tranſcript from the boſome at firſt (a true Ectypon of that Original,) of which our Redeemer and Law-giver, ſays, *Heaven and Earth may paſs but theſe ſhall not*, and which thou art with equall ſtrictneſs bound to keep, as that, *Thou ſhalt not ly, Thou ſhalt not blaſpheme, Thou ſhalt not murther, Thou ſhalt not commit adultery*. Wilt thou not Theſe? Dareſt thou Thoſe? Mayeſt thou not murther! Wouldeſt thou Covet? Wilt thou not Ly, and yet Stealeſt? Or, *Thou that abhorreſt Idols, committeſt Thou Sacriledge? Thou that boaſteſt of the Law, through breaking the Law diſhonoureſt thou God*, as well as diſgraceſt thy ſelf, *as it is written, The Name of God is blaſphemed among the Gentiles thru*. As if any of them ſhall ſee us breaking our own Law, tranſgreſs our Gods Commandments, trample upon his Precepts, and make no care of the revelations of his Holy Will, not half ſo much as of an Ordinance of Parliament, Will they not blaſpheme, traduce, rail, revile, nay, *maledicere*, Even Curſe and profane our God, that has ſuch untowardly diſobedient ſervants! Will they think him a God! or think we Think him Such, if we thus misbehave our ſelves toward him! Doth not Saint *James* ſay, *He that breaketh the Law in One point is guilty of All?* and upon this account, becauſe *He that ſaith, Do not commit adultery, ſaith alſo, Do not Kill*, (or Steal, or Covet,) (the image of Authority defaced is the ſame) and doeſt Thou break Two and hopeſt to be innocent? Never juſtifie thy ſelf that thou ſweareſt not, if thou lyeſt: Or, thou ſpeakeſt truth in Civill matters, if thou blaſpheme: Or, thou doſt not kill, if thou ſteal or covet. He that defaces the image of that authority ſhining from God upon All the Law that procures its Reverence, it is not far from his accounting any part a Common word, foraſmuch as the ſame boldneſs that hath removed reſpect from any part, will by like occaſion or temptation take off what is no better faſtened nor can be any where: He that dares venture on the Chalice, needs not or will not ſcruple at taking the Carpet, or Bible, or Pulpit-cloth. 'Tis not a broken collection, but a full and even Decalogue, All are equal-

Matth. 5. 18.

Rom. 2. 22, 23, 24

Iam. 2. 10, 11

ly Gods Commands, and backed with his authority ingraven and ſhining in the face of every one, As was ſaid, *Heaven and Earth may paſs away, but none of theſe ſhall paſs.* It is *God* thou muſt anſwer *not Man* for neglect and tranſgreſſion here, Whoſe Law thou haſt broken, Not but more then Whom in Temporals thou haſt injured and Wronged. *In the day when God ſhall judge the world by Jeſus Chriſt*, remember then thou haſt been told *Both*, both that *He that breaketh the Law in one point, is guilty of All*, and He who wrongs Here, breaks it in two, in Coveting and Taking.

Heed next what Thy Saviour ſaith, and this is at leaſt Goſpel-Law; *Except your righteouſneſs ſhall exceed* (ſaith He) (Yours, Ours, Anies, that is his Diſciple) *the righteouſneſſe of the Scribes and Phariſees, ye ſhall not enter into* my *Kingdome of Heaven:* Now what was Their Righteouſneſs? They paid dues Duely: Queſtionleſs they did ſo, elſe they had not been *Themſelves*, that is, *Righteous*. And for this Particular, by the Providence of God it is ſo come to paſs, that we have repeated double aſſurance, and from Chriſts own words again, what was their Righteouſneſs This Way. Firſt, in his Perſonating a Proud Boaſter amongſt them, that *He paid Tythes of all he poſſeſſed.* Which if He had not, the ſuppoſition had been an untruth, the Man made to ſpeak nothing to the purpoſe, Nor had he been brought in truly Commending, but indeed Belying himſelf, That hee ſhould have done that he did not. Next in that Comparative exprobration, where we have that Exactneſſe that *they Paid All* to the leaſt, They left none out *to very Mixt Annis and Cummin*, which our Saviour ſays, They Ought (*So it was their Righteouſneſs*) to have done, and yet not have left Juſtice and Mercy undone. So that no doubt can be but they Paid, they paid duly, they paid of All, and this was Their Righteouſneſs; and yet Chriſt to His Diſciples, unleſs yours ſhall both Equall and Exceed *Theirs and This*, ye muſt not look to come within my Kingdome. Nor let any one obſerve here Duty on their part, They were bound: True they were ſo, but are we altogether Free? Have we not a Rule of Righteouſneſs, in ſome ſort as ſtrictly binding as Theirs, to make obedience *duty*, not performance *Supererogation?* and we

Matth. 5. 20.

Luk. 18. 12.

Matth. 23. 23.

we as well as they are required not to give but pay? What elſe are thoſe Laws before alledged many, and yet of force? Are they not All ſo many rules of Doing, or directing right forward in what way we muſt go, or we go amiſs; and ſo by conſequent our Conformity to them, our being Ruled by them muſt bring home the imputation to us of Going right forward or amiſs, in the way of Righteouſneſs or Unrighteouſneſs, that We may be Juſt or Unjuſt as they?

We have no Levitical Law perhaps indeed, no *Jus Divinum*, (at leaſt not within my circle or which I inſiſt on, though I forſake it not, much leſs diſclaim or oppoſe it:) But we have yet without that enough of our own, and to binde faſt enough, a Rule, a Law, Sacred, in force, and binding, as hath been ſhewed, and whereto we ought to take heed as that which in ſome regard was parallel with Saint *Peters ſure word of Propheſie*, and is our light and rule to guide us through the darkneſs and uncertainty of this world: the tranſgreſſion whereof is alſo penall and with us ſinfull too (for every diſorderly liver is likewiſe a Sinner to God,) and it Muſt have the imputation of Righteouſneſs or Unrighteouſneſs, as We neglect or obſerve Here this Sacred, National, Engliſh Rule of our Doings. Nought elſe is the ground of Property, of Any property, that renders theft poſſible, or *Wrong* the Relative to *Right*; This is the boundary of Fields and Vineyards, cuts out to All their Lordſhips and Inheritances; and to obey or diſobey, break or keep This, makes us as Culpable or Juſt, Righteous or Unrighteous, as by obſerving or tranſgreſſing his Judiciall Law the Hebrew could have been in Iſrael. No queſtion but we have Law the Rule of Righteouſneſs, as binding to us as the Hebrews in their Politie; we may be as Righteous as they, and yet if we be not more, we fall ſhort of our High hopes; for *verily* (ſays Chriſt) *unleſs your Righteouſneſs* (that are my Diſciples) *ſhall exceed that* (parallel) *of the Phariſees, ye ſhall never enter the Kingdom of God.*

Or, likeſt thou better another Rule of thy Saviour? It hath in it as much of wiſdome and equity for civill Commerce as I believe is to be found in ſo many words in the world again. Old *Tobit* had given it in the Negative before, *Do to*

no

Tobit 4 15. Matth. 7. 12. Luk. 6. 31. *no other what thy ſelf hateſt.* But Chriſt changed it to the Affirmative, Therefore *All things, whatſoever ye would that Men ſhould do unto you, even ſo do ye unto them, for this is both* (Text and Expoſition,) *Law and Prophets.* A moſt indifferent Rule, equall reſtriction, which nature ſuggeſts, Reaſon approves, Religion inforces, and All Nations, Perſwaſions and Men, will I believe ſay *Amen* to the Equity of: Thine own Saviour has inrolled it into the Sacred Tables of his Law too, the ſum of his Moral Pandects, a ſhort but full Declaration of needfull Duty, and doeſt thou reſolve to obey, or refuſe? If to obey, Ask thy ſelf, Whether *Thou wouldſt be content another ſhould thruſt thee out of thy Right-full Right?* If thou hadſt a livelihood to direct and miniſter in Gods ſervice, or but to ſerve thy ſelf eating and drinking, *Wouldſt Thou imbrace it as acceptable good dealing* (any otherwiſe, then as thou wouldſt ſubmit to perſecution) *to be turned out into the High-ways, and Hedges,* to get what thou couldſt finde in the Foreſt, *imbracing the Hils for a ſhelter, and the Rocks for a covering?* If thou wert in preſent by due and honeſt forms of Law inducted and poſſeſſed *A. B. Rector Eccleſiæ Parochialis de C.* and ſo *tam de Jure Communi & Eccleſiaſtico, quam de antiqua, laudabili, legitimeque præſcripta conſuetudine jus percipiendi, recipiendi, & habendi omnes & ſingulas Decimas tam majores quam minores mixtas & minutas infra Parochiam de C. provenientes, creſcentes, renovantes, & contingentes,* did of right belong unto thee, (as was before in the Libel, and if proved carried the Tenth,) *Wouldſt thou, diſcharging thy duty,* and carrying thy ſelf according to Law for what thou receiveſt by Law, be willing thy Neighbour ſhould deprive thee of That Own? and having right to receive the Tenth by the ſame title He retains his Nine, and would count him a Thief ſhould take any away, *Think well of it that the great Fiſh ſhould eat up the little one to make his paunch ſwell, the Nine ſhould devoure thy Tenth,* and thou be turned out of the *Sweet and Safe* of thy Property to a good allowance, thou haſt no reaſon to doubt or fear, thy good Neighbours will afford (for *the labourer is worthy of his hire*) in Charity and Equity?

Equity? Some Overſeers Careful care ſhall ſee thy bowels fed, thy nakedneſs covered, thy needs ſupplyed, thy poverty relieved, thy whole family ſuſtained? Put thy ſelf in caſe of his perſon Now under doubt of being brought to this ſtate by thee, Deal impartially between God and thy ſoul, ſatisfie thine own thoughts in the propoſition and reſolution, and if Thou couldſt accept, *perhaps thy Brother May:* If Thou Wouldſt be ſo done to, *thou mayſt the rather expect it of Him: Petimuſque damuſque viciſſim*, What thou couldſt be content to undergo, *thou mayſt with more reaſon impoſe to have ſuffered.* But if *Thou abhorreſt* the inconveniencies foreſeen in this way, *Thy Nature* (regenerate or unregenerate, ſanctified or prophane) hate the lowneſs or vileneſs if not baſeneſs that muſt be conſequent upon ſuch an injury (when thou ſhouldſt not have left what thou couldſt call *Thine Own,*) *Thou wouldſt not* by choice *part with thy Right* any more then ſuffer an Extortioner to deprive thee of that thou haſt, or the ſtranger to ſpoil thy labour; Nay, *Thou wouldſt defend thy ſelf* as againſt a foraigner, a Spanyard, an Indian, or a Thief; *Then think what thou wouldſt put upon another*, State thine own Caſe in anothers perſon, as *Nathan* taught *David* to ſee his Sin in the ſuppoſition of his poor Neighbour, Invade not thy brother, Put not *Him* beſides his Right, Enter not *His* Poſſeſſion, Diſturb not *His* property: Allow *Him* the Comfort and Aſſurance of his *His Own*, which thou wouldſt rather ſpend to the utmoſt farthing, *if not Dy*, rather then ſuffer thy ſelf to be put out of, to ſtand to the Courteſie of Supplied with any Charitable allowance. Good Chriſtian, *Do as thou wouldſt be done unto, walk by thy Rule, Live as thou Believeſt*, or ſhelter not thy ſelf under Profeſſion with thoſe *of Whom thou art not* Thou haſt no reaſon to further or put upon one, what ſhould not upon another, to force on his acceptance what another would decline, or upon thy neighbour what mainly Thou declineſt Thy Self: Thou mayeſt think I have the ſame affections, deſires, needs, neceſſities, the whole body of humanity and humane frailties belonging thereto to be ſupplied or yeelded to that thou haſt; The ſame infirmities, diſeaſes, emptineſs, nakedneſs, to be fed, clothed, relieved,

ved, and in all regards worthy consideration as and in the way thou requirest, If Thou wouldst not trust to Nothing, if Thy self wouldst not be turned to the shame and misery of pennileſs bench, If Thy Love of this world consisting well enough with the Love of God would not be outed of Plenty and Wealth, stripped of property and left to uncertainty, ὁ μισθὸς, μηδενὶ πιστὸς, Be but as just and reasonable as old *Tobit* desired his Son, *Do to None* (μηδενὶ, No not to One) *what thou thy self hatest*. Whatsoever thou professest, or receivest, or believest, Be a *Doer of the Word*, not a Knower onely, *lest* thou deceive thy self: for *Not These shall be justified before God*, but *Those*; And, *What doth it profit a Man that he say He hath faith, and hath not works, shall that faith Save? Was not* Abraham *our Father justified by Works, when he offered his Son on the Altar?* Whence *we see, by Works was his faith made perfect*: And *as the Body without the Spirit is dead, so Faith without Works is dead also*. I urge an Apostles words onely in His meaning, and that must sure imply Heterodox in opinion from none that is in Religion truly Christian. Proceed: Is there any such Thing as *The fear of God!* Does any Text of the Old or New Testament mention it clearly to duty? Dost thou Believe it? and that thou hast it, or oughtest to have it? and Canst thou then take or detain that which belongs to another? or lay hold, or keep hold of thy Neighbours Goods? Do not the Principles of thy Religion improve and heighten the in-bred perswasions of Nature, Teaching, and assuring thee first, That this is Wrong, yea ἀνομία and so ἁμαρτία Transgression and Sin, and darest thou *Then* do it, when thy Judge looketh on! pretend *to fear God*, and yet *do What he Hates*, and yet *thou feareſt him*, and yet *thou art confident to disobey him!* Or, if thy filiall awfull fear be not yet awakened, let me Knock louder with that Thundring threat of thy Saviour, *Luk.* 12. 4,5. *And I say unto you my friends, Be not afraid of them that kill the body, and after that have no more that they can do. But I will forewarn you whom you shall fear: Fear him, which after he hath killed, hath power to cast into Hell, yea, I say unto you, Fear him.*

Tobit 4. 15.

Iam. 1. 22.

Rom. 2. 13.

Iam. 2. 14.

Ver. 21.

Ver. 26.

Eccles. 34 21.

Did

Did not *Zacheus*, Chriſt his hoſt, come in with his injuries in his hand, and before he makes any queſtion of *his Salvation*, openly profeſſeth *his Reſtitution? Behold, Lord*, (1) ſaith he, *the half of my goods I give to the poor, and if I have taken any thing by falſe accuſation, I reſtore him fourfold. Then Jeſus ſaid unto him* (Comfortably,) Then and not before, *This day is ſalvation come to thy houſe.* This (whether ſtranger or home-born,) demonſtrated him to be one of the *Sons of Abraham.* This is The way back by weeping croſs: In the fore-Right of Injury no end probably foreſeen but in Hell. He that Repents, muſt Amend: Hee that Amends, will Reſtore: For while the injury remains, is no alteration, and without alteration is no to better ſtate-reſtitution. In the Scripture ſtill, Does not the Old and New Teſtament require and joyn to call for Juſtice, Truth, Fidelity, Honeſty? That which is (2) *Juſt and Right ſhalt thou do, and* (3) *whatſoever is Juſt*, as well as *whatſoever is Holy*: and (4) *Provide things honeſt in the ſight of Man* as well as God; And ſure the world counts this Honeſt, to give every one His own, the very Syllables of *Rom.* 13. 7. *Render therefore to All their Dues*, whether Tribute, Cuſtome, Fear, or Honour: And *Owe Nothing, but to Love.* Or, if we doe not, *The wrath of God is revealed from Heaven* (even to true Believers,) *againſt all ungodlineſs and unrighteouſneſs of men, who hold* if it be *the Truth, in iniquity.* Which, *Iniqui Regnum Dei non poſſidebunt*, 1 Cor. 6. 9: and *Know ye not that it is ſo*, It is *Poſtulatum*, a thing grounded among Chriſtians, and with Caution, *Be not deceived:* (Some may tell you otherwiſe;) The unrighteous, and who are They? *Fornicators, Idolaters, Adulterers*, ἀρσενοκοῖται, unfit to be Engliſhed, (good company! and with them) *nor Thieves, nor Covetous, nor Railers, nor Extortioners*, a good part of them thoſe that meddle with other mens goods whether by force or fraud, in deed or deſire, ſubtraction or detention, violent Extortion or clanculer Surreption, the ſin, becauſe the wrong, is the ſame, and Be not deceived, Do ye not know that *Theſe ſhall not Inherit Gods Kingdome! Should not* the Kingdome of his ſanctified

(1) Luk. 19. 8, 9. Diſcimus ab exemplo quid faciendum ſit iis quos peccatorum pœnitet. Primum enim quatenus fieri poteſt, reſarcienda ſunt damna aliis per vim aut dolum illata, quod ipſa natura dictat: Neque enim peccare deſiſtit qui alienſi retinet. *Groti. in loc. pa* 789. Peccatum non dimittitur niſi reſtituatur ablatum, *Reg. Iur. Canon.* 4. & Peccati venia non datur niſi correcto Reg. 5.
(2) Deut. 16. 20.
(3) Philip. 4 3.
(4) Rom. 12. 17. Chap. 1. 18.

ctified and juſt Congregation, (his Church,) Here, but be caſt out by Excommunication with profane Heathens, but *ſhall not* his holy and glorious Church of the firſt-born hereafter, where the imputation of moral Righteouſneſs ſhall be the loweſt qualification, The *holineſs of Saints* ſhall be thoſe white and ſhining glorious Robes without which [1] none ſhall be admitted to that Bride-chamber. Indeed *ſuch were ſome of you* ſometimes; but *ye were waſhed* (in Baptiſm) *ſanctified* (from the firſt uncleanneſs) *juſtified* (from the other unrighteouſneſs) *in the Name of Chriſt, and by the* (ſearching) *Spirit of our God*, and ſo are now *a* [2] *pure Church not having ſpot or wrinkle or any ſuch thing*, but *walking* [3] *Circumſpectly* (ἀκριβῶς exactly, preciſely,) [4] *avoiding the very appearance of Evil*, and [5] *hating the garment that is but ſpotted with the fleſh.*

(1) *Follow Peace with All, and* HOLINESS *without which No one ſhall ſee the Lord.* Heb. 12. 14. *Bleſſed are the Pure in heart, for they ſhall have this advancement.* Matth. 5. 8.
(2) Epheſ 5. 27.
(3) ver. 15.
(4) 1 Theſſ 5. 22 Ab omni ſpecie mali.
(5) Iud. ver. 23.

Beſides, we Know Love is the fulfilling of the Law; the ſumm of the Chriſtians Law; The firſt, ſecond, and third thing required, All is briefly comprehended in it, and can this Conſiſt with wrong? Do I love my neighbour when I injure him, when I oppreſs him, and will not give him mine own, nor will not give him His own? Is this Juſtice? far below Love! Is not Mercy and Pity a ſtrong piece of humane good Nature? Compaſſion to one that needs (much more to one that hath Right) the top pinacle of Chriſtianity? *I will have Mercy and not Sacrifice*, ſays [6] *Chriſt* [7] from the Law, and my Diſciples ſhall be *kept alive* rather then *the Sabbath ſanctified*: And do theſe things Conſiſt with Wolviſh Cruelty and wrong? to ſpoil a man and his inheritance? to Rob a man of his Right, or not to give him his Right? *Wherewith ſhall I come before the Lord*, ſaith the Propher, and *bow my ſelf before the High God? Shall I come before him with burnt-offerings and calves of a year old? Will the Lord be pleaſed with thouſands of Rams? or ten thouſands of Rivers of Oyl? My firſt-born for my tranſgreſſion? the fruit of my body for the ſin of my ſoul? No: He hath ſhewed thee, O man, what is Good, and what doth Jehovah require, but to do Juſtly, and to love MERCY, and to walk humbly with thy God?* So in another Prophet, *To what purpoſe is the multitude of ſacrifices?*

(6) Matth. 9. 13. chap. 12. 7.
(7) Hoſea 6. 6.

Micah 6. 6, 7, 8.

crifices? *I am full of the burnt-offerings of Rams, and the fat of fed beasts. Bring no more vain Oblations: Incense is an abomination before me: your new Moons and Sabbaths,* (All these God himself commanded) *the calling of Assemblies I cannot away with,* &c. But what then? *Wash you and make you clean: Put away your evil doings, Seek judgement, Relieve the oppressed,* &c. *and then come and let us reason together.* And least any should think these are Old Testament Duties, S. *James* has left *Pure Religion to consist* in Such things, *chap.* 1.27. What! has the meek Gospel brought in Cruelty and hard-heartedness? Does the Christian Law allow us to be unmercifull, unjust, unrighteous, fierce, savage, barbarous, and no Religion or Irreligion in the dispensation of wordly Goods or conversant about them, as in oppression, fraud, injury, putting men out of their own, *&c.* that a Man may be a Lion, a Christian, a Tyger, and a Vulture all together? preying upon what he can catch of his neighbours, and holding it, without any bowels of compassion? Is this *to follow the Lamb (of God, that taketh away the sins of the World) Whithersoever he goeth?* What saith S. *Peter, Be pitifull, be courteous,* rendring to none *Evil* though *for Evil?* What said S. *Paul, Put on therefore as the Elect of God, (Holy and beloved Brethren) bowels of mercies, kindness, humbleness, meekness,* &c. What saith both their Master, *Be mercifull as your heavenly is mercifull?* Is this agreeable hereto to oppress and undo without cause? To turn our Fellows out of those Rights they have as good Titles to as our selves to any thing? to contribute our small and single power to undoing of Thousands? yea, thousands of Families, of Choicest Wits, best Education, greatest Hopes, highest Trust, that have mens Souls committed to them but They, their Persons and Estates should be left to spoil, themselves bequeathed to the Beggars inheritance the Wallet and the Scrip, to live of what is Given them; and God knows, Charity is so cold in our Northern Clime, that many are heard to have been starved every Winter, and when Summer comes have little more then *Chams* allowance to his father, A Mantle to cover nakedness: And helpless too; for what should they do? They have their due Rights with-

Esai 1.11.

Rev 14.4. Iohn 1.29.

1 Pet. 3.8, 9.

Col. 3.12.

Matth. 5.47. Luke 6.36.

holden, and cannot Dig, to beg they are ashamed. Shall they return to their fathers house? Most of themselves are Parents. Shall they take some commendable course of life? The Laws are here a hedge of Thorns in their way, or rather a Castle wall furnished with Artillery, and having store of Ordnance mounted and rammed up with penalties ready to be poured out, perhaps [1] ten pounds a moneth if they shall keep a Malt-house or Brew-house, or use a Farme, and buy or sell, or use honest Merchandise with their Neighbours. Sit still and want they may, and starve, and this like to be their desperate refuge. For 'tis known how the Statutes have laid perpetual restraint, disabling or punishing if they make any excursions into other mens bounds, not dreaming they should be e jected out of their own, and so far, well: for it was prudently forecast, that every one should tug at his own Oar, and keep his Oar in his own Boat; that every sort should keep within their own limits, and 'tis justly penal if they be extravagant, and further confusion of things by mixing confusedly imployments. But then a man should be allowed his own, and not beat out of his own doors, and forbid to enter his neighbours: This makes him desperate with reason, and if that be taken away was the reason of his Restraint, it is but equity he have leave to return to his Natural first liberty. How do

(1) For the more quiet and vertuous increase and maintenance of divine Service, the preaching and teaching of the Word of God, with godly and good example giving, &c. Be it enacted, ordained. &c That no spiritual person secular or regular, of what degree soever he or they be, shall from henceforth take to farm to himself, or to any person or persons to his use of the Lease or Grant of the King our Soveraign Lord, nor of any other person or persons, by Letters Patents, Indentures, Writings, by word or otherwise, by any manner of means, any Manours, Lands, Tenements, or other Hereditaments, for term of life, for term of years, or at will, upon pain to forfeit ten pounds for every moneth that he or any other to his use shall occupie any such Farm, by reason of any such Lease or Grant hereafter to be made. The one half to the King, &c.

And be it also enacted by the Authority aforesaid, that no Spiritual person or persons, Secular or Regular, of what estate or degree soever they be, shall from henceforth by himself, nor by any other for him, nor to his use bargain, and buy to sell again for any lucre, gain, or profit, in any Markets, Fairs, or other places, any manner of Cattell, Corn, Lead, Tinn, Hides, Leather, Callow, Fish, Wool, Cloth, or any manner or Victuall or Merchandise, what kinde soever they be of, upon pain to forfeit treble the value of every thing, by them or by any to their use, bargained or bought to sell again, contrary to this Act. And that every such Bargain and Contract hereafter to be made by them, or by any to their use, contrary to this Act shall be utterly void and of none effect. The one half to the King &c. as before.

Provided. &c that no Spiritual person or persons, Regular or Secular, of what estate, degree or condition soever he or they be, from the first of April next coming shall have, use, or keep by him or themselves, or by any person or persons to his or their use or commodity, any manner of Cane-house or Cane-houses to be used or occupied to his or their use, commodity or behoof: Nor any Brew-house or Brew-houses, to other intent then for their own use, under pain of the like ten pounds a moneth. 21 Hen. 8 cap. 13.

the

the Prophets exclaim againſt cruelty, oppreſſion, wrong, *the iron hand* and *ſtony heart?* Some are ready [1] *to ſell the poor for a pair of ſhooes:* [2] others *remove the Land-marks and violently take away the flocks: they drive away the Aſs of the fatherleſs, and take the Widows Ox for a pledge.* Others [3] *tear off the skin, and pull the fleſh from off the bones, chopping them in pieces, as for the pot, and as fleſh within the Cauldron:* and do not the tears run down the widows cheeks? ſays *Syracides.* Theſe are Complaints befitting Gods Book, of things Religion doth naturally abhor, and ſhall we further any ſuch injuſtice as may, under what form ſoever, occaſion them or the like, and yet have Charity in our Bible, Juſtice in our Law, Equity over all, and Mercy at the top of our Religion, above Sacrifice? Conſider alſo one example or two, how ſuch like injury has thriven and proſpered, either with Sacriledge or without Sacriledge, of theſe that could not be content with their own, but muſt incroach upon their Neighbours, and have it, and they proſpered accordingly with a Vengeance. *Ahab* had a fair inheritance, His Anceſtours lived well upon it as Kings of *Iſrael*, and when *Naboth* had his own too, we hear of no complaint or diſturbance, but when He that had Much muſt have More, He that had Little muſt loſe of that, and the poor mans garment be taken away to piece the Rich mans skirt, perhaps to cloath his beaſt, or provide Hangings for his Lodging chamber, or Dining Room (as I never heard me thinks a ſadder complaint then, that Walls are cloathed, while the poor go naked, Horſes well ſuted and fed while Chriſtians ſterved,) Then went all to wreck, and this incorrigible unreaſonableneſs of one muſt be a cauſe to both of their confuſion. A pang of luſtfull covetouſneſs lays hold upon the rich mans greedy heart: His neighbours little Cottage and Garden himſelf falls deſperately ſick of, and never can be well till the uſuall forms of Juſtice had been uſed for murther, faſting and prayer muſt let out the life-bloud of the poor man to let in the ungodly King into his Vineyard. and then all as ſhould be. But ſhall he proſper? No: To give warning to all unreaſonable Mammoniſts who cannot be content with that they have, though Nine for one, unleſs they have

(1) Amos 2.6. chap. 8.6.
(2) Iob 24 2,3.
(3) Micah 3.2,3.
1 Kings 25.

the other one for Nine the Tenth too, Let him couet, and take, poſſeſſion with a vengeance: *Haſt thou killed and alſo gotten poſſeſſion? Thus ſaith the Lord, In the place where the dogs licked the blood of Naboth, ſhall dogs lick thy blood, even Thine,* [1] and the Prophet *Elijah* was ſent to tell it him, none of whoſe words would, or could, or did fall to the ground. *Gehazi* [2] could not be content with his Own, but muſt abuſe his own Credit, and his Maſter s truſt, the expectation from a Servant, and intereſt in a Maſter both together, for a Talent of Silver (perhaps ſome ſpending money to his former means,) and two changes of Garments, the ſuperfluities of a Ward-Robe, and how ended the buſineſs? *The Leproſie of Naaman cleave unto thee and thy poſterity* (an hereditary plague,) *and he went from the puniſhers preſence a Leper white as ſnow. Achan* [3] could not let the golden wedge and the Babyloniſh garment go in the Due way God had appointed, but muſt be filching for his private uſe, what had been *publickly Devoted*, and the whole Army, yea the whole Nation, yea all Gods people ſped the worſe for it. In deed it was a *Cherem*, [4] Religion had laid her ſacred hands upon all that ſpoil for God, and thence the ſeverity of worſe, then ordinary indignation. [5] *It is a fearfull thing to fall into the hands of the living God*, for [6] *Our God is a Conſuming fire. Ananias* and *Sapphira* their offence lay not altogether beyond the things of this life; they did but take back what of Earth they had devoted to Heaven, and yet how does *the Wrath of God fall upon them to the utmoſt?* We finde them gaſping and dying at once and preſently both; as terrible Examples of divine ſeverity as we finde any where, and yet the meek Apoſtle inflicted it by his power from another World, and I hope we believe it becauſe we pretend to believe the Bible. Generally obſerve, there and *in Uzzahs*, and *Uzziahs* Caſe, the *poor Wood-gatherer*, *the men of Bethſhemeſh*, or whereſoever in the leaſt Religion has been touched to be profaned, Gods *Jelouſie* has been up and his quick hand reached home to revenge with ſharpneſs of fury any ſuch violation. Nor may we forget the poor man in [7] *Nathans* Parable: Alas poor man! he had not much, but one poor Lamb for plenty

(1) Chap. 22. 38.
(2) 2 Kings 5.
(3) Iosh. 7.
(4) Chap. 6. 17, 18. 19. Chap. 7. 1.
(5) Heb. 10. 31.
(6) Chap 12. 29.
2) Sam. 12.

plenty abroad, and that the Rich miſer muſt have to ſpare his own fold, But ſhall it goe ſo? No, ſaith *David* in another Mans caſe, He ſhall feel my Angry Hand: By a great oath, his own life ſhall expiate an offence with theſe circumſtances, and *the lamb he ſhall reſtore fourfold beſide, becauſe He did this and had no pity!* O pity, pity! is ſtill a great part of the Bible goodneſs: Oppreſſion and wrong, Nothing More, the merits of Hell fire by our Religion: the Law and the Prophets, the Old and the New-Teſtament joyn in to have juſtice to all, and *Mercy to thoſe in need* a neceſſary qualification, No hopes of religion without them, becauſe their want is a tranſgreſſion of Religion, and what then of thoſe who cannot be content with their Own, who will not give other men Theirs, who having Nine for One already grudge and complain that they may have that One for Nine alſo *from Gods ſervice*, to ſacrifice to their own greedineſs, covetouſneſs, inſatiable bellies, or luſts and voluptuouſneſs. The laws of the twelve tables or Mahomets Alcoran, the Bannyans (1) Shaſter, or the (2) Perſees Zundavaſtaw may teach them or us as much Religion as this: Nay the tables of the boſome afford it clear and fairly legible, that Every one muſt have his Own, or elſe there is no living, and this is the very outſide, (I know mine own boſome) of that I did intend to contend for: Nor Therefore Throughout the world Doe or can I fear any juſt man mine enemy.

(1) *The title of the law of ſome Eaſterlings: whoſe eighth Morall commandment is*, Thou ſhalt not ſteal: Herberts Travels, page 43.

(2) *Some other Eaſterlings who call their law by this name. One of their Morall precepts is, Not to covet what belongs to another man*: Id. page 51.

But I will not now divert: Hitherto we have kept promiſe, and made our walk through the Groves of Paradiſe Onely: Gods bleſſed Book, from the Sacred leaves of whoſe Holy and heavenly Oracles have theſe amplifications been drawn, which it would be our wiſdom to heed, as it is in our Faith to believe, and muſt be our Righteouſneſs to Obey; and this directing in what we ſhould doe, or what we ſhould not doe, about Civill Juſtice, by rule or example. Methink ſomewhat ſhould ſtick, I hope it will, I pray it may, and None be the ſavour of death unto death, but, (as it will work ſome way) of life unto life, and that of the Soul, and Everlaſting. *All* (3) *Scripture is given of God*: *S. Paul* tels us this (θεόπνευστος, as his word or Breath) and (4) *Whatſoever was* there *writ-*

(3) 1 Tim. 3. 16.

(4) Rom. 15. 4.

ten

ten aforetime was written for our inſtruction, that we through patience and comfort thereof *might have hope* and Light: Now among the heavenly contents of thoſe Divine inſpirations are
(1) 1 Cor. 10. 6. &c. theſe Rules given, theſe examples recorded, (1) That *we might not luſt as thoſe* (then ſet up *for an Example*) *luſted*; Nor Covet as they Coveted, nor *Murmure as they murmured*, Nor yet *be deſtroyed, as they were neither of the deſtroyer*: For *theſe things happened to them for ſuch Examples, but are written for our admonition upon whom the ends of the world are come*. Thou haſt, Chriſtian, thine own light ſhining in them, which thou beleeveſt came down from heaven, of the ſame kinde with that outſhined the brightneſs of the ſunne,
(2) Acts 9. 3, 4. with (2) *Saul, Saul*, Take heed, Take heed; Venture not too far, *Why perſecuteſt thou me*? Believeſt thou? wilt thou not
(3) Rev. 22. 11. obey? If thou wilt not, *He that* (3) *is holy, let him be holy ſtill*: and *He that is righteous, let him be righteous ſtill*: and *He that is unjuſt, let him be unjuſt ſtill*; and *He that is filthy let him be filthy ſtill*: He that will Covet, let him Covet ſtill; He that will have his neighbours Goods, let him at leaſt graſp
(4) Eccl. 11. ult. after it ſtill: But withall know, (4) That God will bring thee
(5) Col. 3. 25. to Judgment: (5) *He that does wrong ſhall receive for the wrong he hath done*, and *with Him will be no reſpect of perſons*.
(6) Pſalm 15. 1. Iniqui regnum Dei non poſſidebunt: (6) *Lord, who ſhall dwell in thy tabernacle, or inhabite in thy holy Hill? Not he that leadeth a Corupt life, or doth the thing is not right to his*
(7) 1 Theſſ. 4. 7. *Neighbour*; (*God* (7) *is the avenger of all ſuch things, as is every where teſtified:*) *but ſweareth, or giveth to him, and diſappointeth him not, though it be to his own hinderance*.
(8) 2 Pet. 2. 15, 16 Remember Him *that* (8) *loved the wages of iniquity*, and
(9) Mat. 26. 15. *Judas* (9) who ſold his innocency *for thirty pieces of ſilver*;
(10) Daniel 5. and (10) *Belſhazzar* who muſt have the Temple-bolls to carouſe healths in to his Kings & Concubines; He would hardly have forborn at the perſwaſion of a prophet, though he were Rich before, But the worth of a few talents muſt be taken from Gods then Church, which ended fearfully; *His Countenance changed, His thoughts troubled, His back crippled*, and *His knees ſmote one againſt another*. And yet this but
(11) Pſalm 9. 17. the beginning of Sorrows: For All the (11) wicked ſhall once

be

be turned certainly into Hell, and All the people that forget God. Sed meliora canamus, I hope better things, and things that accompany ſalvation, though I thus ſpeak: That every Chriſtian will be himſelf, That every beleever will be ruled by his own Rule; that every ſon of God will be guided by his father, and give to every one his Due, whether God or man, as is written down in the draught of his will, the tables of the Old and New Teſtament. It hath been hitherto but miſtake hath made men grumble, That ſome tyrannous impoſition hath inforced Tythes, ſome Statute Rampant in behalf of the Clergy, perhaps foiſted in by themſelves in the laſt age; but now the truth is cleared up, the heavens ſhine, 'tis bright as day that the whole body of the Juſt law, has, and has from all times called for them, and made them due, a neceſſary part as any of Civill righteouſneſs; Now Men I hope will then not deliberate nor dally, but walk in *the light, while the light ſhineth*; *Doing as they would be done by*, Giving every one his Own, yea *Paying*, not *Giving*, for that is required of thee, if thou be *juſt*, not *Bountifull*. *I my ſelf alſo*, ſays S. Paul, *Was ſometimes a Blaſphemer, a perſecutor, and injurious, But I obtained mercy becauſe* (and as long as) *I did it ignorantly and in unbelief*, (No longer.) If I ſhould have done it afterwards, after the truth came clear to my ſoul, or it ſhined from heaven, and I would or could have cloſed faſt mine eyes againſt it, I might have overſtaid my time, and the light have been taken from me, but I beleeved and converted, and then the Lord (that would have on all) had mercy on me, becauſe I did it, as I did, hitherto in ignorance and unbelief.

Heb. 6. 9.

1 Tim. 1. 13.

Now my laſt appeal ſhould be *ad Populum Chriſtianum*, from Severall Perſons, to whom hitherto, to the Body of the People of this Nation; High and low, Rich and poor, One with another, as the Pſalm ſpeaketh, and All Together, for the thing concerneth All: And my deſire tends to this, That they would in the name and fear of God take heed what they doe, and not be too forward to ſet their hands to that they may beſhrew their fingers for all days of their lives after, in ſhaking I mean or removing one Stone more out of the building to

Pſalm 49. 2.

leave the reſt looſe; or by unſetling *Levi*'s Parſonage houſe, give ſuch example or beginning to ſhake all the reſt, that No one ſhall for an age live ſecure, That His will not next year fall down about his ears. Remember what before of, Imbarqued All in one Veſſell, ſtanding All on One bough. (Take heed of cutting that) and Beware of touching that ſtring to any violence that holds All we have together. Gentlemen and Noblemen look to your ſelves, ye have (as now things are) fair inheritances; God bleſs them to you, and you to them; ye live in *Canaan*, Long may ye there live to ſerve God in Chriſt in all *worldly felicity*: But take heed of venturing too farr in untrodden pathes that have at leaſt ſhew of danger; (the earth ſeems to ſhake under you already;) Be not overforward to the unſetling *Levi*'s Portion in this good land the Lord your God hath given him with you, which ſtands here upon the ſame foundation of Law, (whether of God or Man) that yours and others doe, For fear if you ſhould, what has but the ſame ſupport may totter if not fall (with His) down together: Be ſure there is Juſtice in heaven, and but too likely means on earth to bring it to paſs, that if your hands ſhould help to conveigh fire to one Corner of the thatch, It may very ſoon it ſpread and run all over the houſe, beyond the reach of ſtrength or power of policy and honeſt art to ſuppreſs the flame, before it hath burned both you and yours, your ſtately and magnificent ſumptuous Edifices. Your manſions are many, the Buildings great and fair, their Turrets high, the Battlements ſtately and lifted up, diſperſed far and wide over your rich and ample poſſeſſions: Long may you enjoy them to comfort; But if you ſhould rejoyce in iniquity, and not in the truth, furthering or permitting that ſpoil is of the nature would ruine your ſelves and *Your own*; Take heed the ſtroke reach not home to you too ſoon, leaving you juſtly ere long neither houſe nor land, nor field, nor inheritance. And Good Chriſtian people All whatſoever, Be not *Ye* wilfull to your own injury; Doe not ſtubbornly perſiſt in a way may goe on to your inconceivable danger. If your Tythingmans due be as your Own right, if his Glebe be as your Freehold, and his Tenth from your land as your Nine in it,

and

and the Land it ſelf; take heed how you meddle with the common ſupport, the foundation and onely ſtay and cement of both together: If his bee ſtirred, and yours thereby looſe; if you take away his, and he put on for yours, (as why may he not?) if you both thereby fall a ſcambling, thence a quarrelling, and ſo a fighting what can follow hereon but very confuſion? A third may as well ſtrive for both, and then what have you gained? If the fence *of ſtrong Law* be not able to keep Him harmleſs now, How ſhould you expect that the ſame armour ſhould defend you, and that ſpoil and violence ſhould not break in to your diſturbance, perhaps to lay All in Common, to which the breaking of ſome incloſures, does more then declare, act and operate to make way for. *Let every one have his Own*, and that is an eaſie and obvious piece of Juſtice: I ſay again, *Let every One have his Own*, and thats All I contend for, which ſhould give offence, or ſhew of offence to None but thoſe that would have that which is Other mens. That is His Own the Law makes ſo, of which *Levi* having as Much as any other Tribe, He muſt have thereby as much of Property, and thereby Right and Safety, and Security (He ſhould:) and the troubling or diſturbing him cannot in equity, and the nature of the Thing, but doe that which if it ſhould be proſecuted by the ſame Principles muſt needs bring about, and redound conſequentially to the diſturbance of all Iſrael. Juſtice is all I plead for, Common-Juſtice, a low and ſordid Heatheniſh vertue not ſo much in Chriſtianity, as I take under it, and thereby in it, as it comprehends under it univerſally all ſorts of goodneſs: *Suum cuiq;* therefore, good Engliſhman and Brother, and this is both Common Law and common Honeſty.

As to the Publiqne I have ſaid nothing thereto; Obſerve it all along, and that I have ſo tempered my ſtile, according to my meaning, that I neither have, nor can my pen be juſtly interpreted to have ſaid any thing thereof one way or other. And obſerve it well: for private malice is often apt to ſhroud it ſelf under the Stateſmans Gown, making a ſtalking horſe of the Publique to come at ſelf ends, with craft of *from the power above*, fighting with greater advantage againſt weak-

nesse below, and then gold and armies may soon overwhelm (by such misuse) any private innocence. I crave therefore yet once more this notice heeded, that of the publique I neither have, nor meant, nor I hope have given occasion it should be thought I have said any thing. The Magistrate is that ἐξουσία ὑπερέχουσα or awfull power at top; it may be justly dangerous for any private man to intrude to meddle with, or whether by censure, direction, caution, counsel, or almost good advice to draw into his presence, unless there be to *Esther* her self held out the golden scepter of clear and evident in this case necessary, either permission or invitation. With him therefore I have thus soon done, almost as soon as begun, and craving pardon for but thus looking toward him, crave leave also humbly to take my leave and depart, the most that I have said to or of him, being but this, that I would or meant to have said nothing to or of him at all. A single self is the only fittest object, whether of admonition, instruction, information, or (if need be) contestation for him who is deservedly toward the very lowest stair of those that are such; and who yet trusting in the Righteousness of his cause, and therewith (that which uses not to be wanting) the assistance of his God, (the honour of Christ being also and the Being and continuance of the Gospel of Christ somewhat interessed in the Event) fears not the best and greatest of those that are, in that singularity, upon the highest. Religion, Reason, Truth, Justice, and *the LAW* are his great Patrons; which as He defends, and would not have stirred a bodkin for any other; so he mainally hopes They will defend Him; and by them, they are so publique, returns that advantage which ere while was declined to have against him, of publique interesse and strength enough on his side: For they never come in alone, but assisting with the most voices and votes, arms and armies of men in the world, and if I have not them on my side, I disclaim mine own ingagement, and all my undertaking and performance, presently. For I shall always account it honest policy, whatever in other matters, to strive Here to be always on This strongest side

Rom 13.

Esther 4. 14.

ſide, ſo farre that I profeſſe to remove and ſhift my ſails as their appearance or advantage from them may occaſion, that I may ſteer my courſe along with them conſtantly, nor will I be of that party, (but rather forſake all, as near as I can my ſelf) that ſhall in the leaſt degree give them or what they would have, oppoſition. If any can ſhew I now am, I am not only ready to withdraw, but ſhal at any time hereafter ſhew my willingneſs to kiſs that hand ſhal gently endevor to lead me from Errour to Truth, from Wrong to Right, Nay even love that Sober violence that will not ſuffer me to plod on ſecurely and without controll in an ill way, Though I ſhould be at firſt a little drowſie or inapprehenſive; But for the bitterneſs of malice and rage of fury, which uſes to doubly torment, yet doe no good, wounding an adverſaries perhaps reputation, perhaps patience, perhaps both, and through the ſides of Truth too, and yet works no correction, nor eſtabliſheth any thing in the room of what it deſtroys, I leave to that Juſtice is wont to bring about *in foveam quam foderunt*, and that the fire ſhall work onely upon that cole that bred it, but gently warming whom it would, but could not burn. So does malice, and *So let it*; onely eat into its Own bowels, and fury torment the inraged in their own flames; for me, if any ſparks thereof ſhou'd fly about, and touching me ſomewhat ſharply, prevail to a temptation of return of the like, the worſt arrows of Revenge I have preſently ready to retort are, Permiſſion, Pity, Prayers, and Patience, being reſolved to entertain the croſs with nothing of more malignity then what I learned from my Saviour on the Croſs, They may not underſtand themſelves, *Father forgive them*.

Which as I have received from and by Gods grace in this my life; ſo I hope and pray, (and the rather hope, becauſe I know I unfainedly pray for it) that it may accompany me to my death, and be mine to the end and in the end; and this ſhall ſet me for ever beyond the ſmart of Injuries. Good Chriſtian, be Thy ſelf, Not a *Name onely as if thou Livedſt*, but a Chriſtian in Deed, in Love, in Meekneſs, in Charity, in Juſtice, in Mercy, and forgiving as thou wouldſt be forgiven. Love that Juſtice, Hate All iniquity, give Every man his Due,

Prefer

Prefer not the world before thy Soul, Honesty, or Religion; Let every one have His Own, but Love God Above All, and pray that I may be as Thou art, and then no doubt God which is our Own God shall give us Both His blessing; His blessing of peace and quiet Innocence Here, with eternall rest in the world to come with himself; To whom, One and Three, be all honour and glory

For Ever

&

For Ever For Ever.

Amen, Amen,

&

AMEN.

Τῷ Θεῷ, καὶ Θεῷ.

A Prayer of the Author.

O *LORD Jesu Christ, which sittest at the right hand of thy Father in fulness of Glory,* Sith by thy Providence I have had Opportunity, by thy Grace been Directed, by thy Power Inabled to lay together these things, conducing, I trust, to Thy Honor and Glory; I give thee humble and most hearty thanks for the Riches of thy Mercy vouchsafed herein, and Pray, both that Thy Blessing may go along with this Work of thine own Service, and that the Things may be successfull Thereby for that Great end for which I have intended them. Give them Prosperity and good Success abroad in the World, and Give thy Servant always Grace to rest even *abundantly and richly contented, satisfied, and rewarded in having attempted any thing to the Honour of Thy Name:* Let thy Gospel flourish by All means, Prosper All Courses that tend That way, and if the continuance of these stated Dues be One (so looked upon by the eye of thy Providence, and requisite in the nature of things,) I cast my self down before the foot-stool of thy Throne, Praying and Beseeching, That it may not be in the Power of Man to withdraw or pervert, disturb or destroy. Though thine adversaries should be many and rage horribly, yet *Thou that dwellest on high art still Mightier; Arise, O God, and let not Man have the upper hand; let thine enemies be judged in Thy sight,* and *Put them in fear that they may know themselves to be but Men.*—Defend also thy servant, who putteth his trust in Thee: And if he desire before All things Thine Honour, The stability of thy Gospel has been his chief and onely aim, nor has Any line here but been meant to tend, (as directly as guided by humane frailty it could,) to that point to end in that Center, *O give thou Not Him* then *over into the Will of his adversaries, that* if any Hate *they may obtain Lordship over*

ver Him: Make good Thine Own Cauſe, in ſtanding by Him that laboureth for that Cauſe, Thy Truth and Thee; Stretch forth the right hand of thy Power evermore mightily to ſuccour and defend Him, *Deliver him from the gathering together of the froward and from the inſurrection of Evil Doers; Let the ungodly* or unjuſt *fall into their own Nets together, but let him ever eſcape them.* Give alſo, Good Lord, Merciful and Gracious, unto All that love thy Truth eyes to ſee it, Hearts to embrace it, Affections to cheriſh it, and a good will to Do accordingly: and vouchſafe likewiſe Prudence againſt the ſubtil Serpent that Any who bear good will to Sion, may never procure her Hurt, but ſtabliſh theſe due Means on Earth thy Providence looks upon and has appointed as neceſſary to accompliſh their juſt and holy ends, what they meant to eſtabliſh, by no improvidence ever diſturbing or deſtroying. Finally, Grant Victory to Truth, Progreſs to Juſtice, Stability to thy Church, Perpetuity to Thy Goſpel, and that no Lovers thereof Here may take up lower then with, *That the Light thereof may continue ſhining Ever* and *Over All the world, to All ages and* generations. Thus let *thy Name be Hallowed, O our Father which art in Heaven,* Let *thy Kingdome come* O Saviour and Bleſſed Redeemer, Let *thy Will be done* Moſt holy and bleſſed Spirit, *in Earth as it is in Heaven: Give us, Forgive us, and preſerve us from Evill:* For Thou only, O Chriſt, with the Holy Ghoſt, art moſt high in the glory of God the Father; To which God One and Three be All Honour and Praiſe for ever and ever. *Amen.*

Grace be with all thoſe that Love the Lord Ieſus Chriſt in Sincerity.

POST-

POST-SCRIPT.

Courteous Reader,

FOR ſo I ſtyle thee, and hope to finde thee, or have need to Make thee, and the moſt bountiful dilatation of thy Courteſie drawn forth to Cover or Pardon thoſe many imperfections this my firſt-born hath brought with it into the world. Some doubtleſs both in matter and form; for Who ever Spake that Erred not, Much in More then a little? (*In multiloquio nunquam deerit Vanitas,* This at the leaſt, as the Wiſe man aſſured,) from Shortneſs of Inquiry, Dimneſs of Underſtanding, Weakneſs of Judgement, Diſtraction of Buſineſs, Inadvertency or ſome fruitful Cauſe of Errour or other, Moſt men being forced to number their miſtakes by their Pages; Onely as to purpoſedly Erroneous, *Deceiving or being Deceived,* I Sacredly and Seriouſly diſavow. At the Preſs alſo Poor *Mephiboſheth* caught ſome miſchance: Blemiſhed in his face? nay, crippled in his limbs, lamed at leaſt in his feet, and complaining oft he can hardly go right forth for want of ſenſe; which bruiſes require thy Healing Correcting hand; Some of Many are collected, and annexed, The reſt, like our daily ſlips, almoſt innumerable.

Thou art to be, 1. Remembred, that *In multis labimur omnes,* None (below) goes ſo ſure but he ſlips ſometimes, None ſo firm and upright but he ſteps a little awry, and Thy ſelfe wilt, I truſt, ask pardon for thy daily failings. 2. Intreated, to *Do as thou wouldſt be Done to*; *Judge* (or Judge not) *as thou wouldſt* (or wouldſt not) *be judged*; in the ſpirit of meekneſs, *Conſidering Thy ſelf, leſt Thou alſo be tempted.* 3. Informed, That a purpoſe was of attempting ſatisfaction

Matth 7.12. Ib ver. 1. Gal. 6.1.

of those many whether frivolous or more weighty and substantiall doubts that usually occurre about this established Course (the frame whereof was likewise contrived, and divers of the materials brought together,) As that, This proportion is too much, The Receivers are Ill Men, Good Men take offence at Both, Exactions throng in with Suits, and Injuries with Exactions, The bottome of all is in *Canaan*, some Jewish Laws, The people shrink under the Heavinesse of the Burden, *Iure Divino* is declined by Many, (and Here,) The Supream Power may alter all Humane Constitutions, &c. But, because These would both lead toward *the footstool of the Throne*, (whether, save in my Devotions, I constantly decline to look,) That which Is is Much, These might make Too Much, And here are Principles (especially from the Main of Civill Right made unquestionable, and the Morall and Indispensable duty of Justice in paying which must needs follow thereon,) upon which common reason may work out satisfaction to the Most, I therefore Suppress or Delay, as Accepts of what is here may further encourage or dissuade. Be requested, 4. and lastly, not to take Causeless exceptions at any of those things which as they come from us and in our Humane frailty cannot but afford those that are Material, Reall, Weighty, and Substantiall enough. I speak of most things As They Were, and as in the Times When They Were (How else should I reach home?) as Churches, Clergy, Royalties, Rights, Jurisdictions, Princes, Peers, Powers, Priviledges, and Preeminencies, &c. Not that I am willing to engage for All another may think good to oppose about them, Or stand in Defensive of Any thing howsoever since altered: But (εν δε, as the Apostle suggested with much quickness in another case,) *One Thing I do*, That I am about I *Here* keep to, and so that be Secured, would not willingly intromix, draw or be drawn in to other accidentall by-Quarrels; So I may have leave to conveigh my Parlee to the World in the language of the World, best understood by the World, I would not willingly inwrap my self in controversie about any other of Those Things they yet stiffely enough maintained, and in a rigid import who took up the words and

Philip. 3. 13.

gave

gave them Us in their firſt and full ſenſe; Nor haſt thou reaſon to be offended that I balk not *the publick tone*, to conform *to thy Singularity*, for the Many are to be regarded in A Multitude, and the Moſt in moſt largely diffuſive Communication to All; But if thou remain obſtinate and undeniable in thy expectation or otherwiſe ſatisfaction, I conform to Thy deſire: Change what thou wilt, ſo thou keep the matter; Retain the ſubſtance and vary the phraſe; Hold to the Body, New-ſhape my outward form of Expreſſion, conform to thine own will, judgement, or fancy; At thine own charge I approve, or (if thou wilt) Suppoſe the thing Already done.

Thou ſha't but wrong thine own Judgement to thy judging friends, if thou quarrel with ſhadows, or take advantage of that I confeſs to take licence and ſcope enough in, a free and plentiful uſe of Tropes and Figures. Alluſions or Similitudes, thou knoweſt, are no good ground *of Argument*, nor ſhould, thou knoweſt as well, *of Arguing or Accuſation*: Theſe ſporting excurſions of buſie and active fancy have been allowed to accompany and recreate the work of graveſt pens, Of no worſe uſe in conſequence then flowers to ſtraw and adorn the work finiſhed; True Charity, if thou haſt any, will never make the worſt of any thing is doubtful or may reaſonably be interpreted with Candour to a better ſenſe, Nor can thy Chriſtian Charity, if it be true, but be large enough *to cover a heap of worſer ſinnes*. I confeſs already to ſay many things I would not ſtand to in the ſtricteſt ſenſe, (Examine Scripture, if thou wouldſt be ſuch a Judge,) much leſs in Any thy Wit or leiſure can affixe, leaſt in what is Heterodox to the Eſtabliſhed and ſo like to be Troubleſome, or indeed Any but what I uſe or mean, (And yet hope All may paſs with Candid and Ingenuous Mindes:) Think not if I mention a Temple or Oracle, An Altar, Prieſt, or Sacrifice, Croſs, or Suppoſed Saint that I am preſently *at my Adoration*, or love All I mention without any ſignified diſlike: Of moſt things I ſpeak *as they Have been taken*, My eye *upon the main*, diverts and takes me off from purpoſed medling or giving all I think *of the intermediates*, and ſo I come right to my ways end,

what matter if I have been a little out in what tended thither? So I come ſafe and ſure Home, I will not ſhun to own miſtakes (involuntary) by the way. I conform my ſelf, (at leaſt I think I do) to the preſent ſtate and condition of Things, being no *Prophet* or *the ſon of a Prophet* to judg of Future, or foretel in the leaſt meaſure any thing of that which is to come: And therefore unreaſonably ſhall any expect I come up to that *which Shall be I know not What, or When, or Whether it ever ſhall be*, Antedating obedience to the Law, (which is a path narrow enough as it is, and hard to keep in the manifold obſervances it requires;) But if *any thing ſhall be changed*, I have no doubt ready enough the *Lawful obedience of a Chriſtian*, as keeping my ſelf cloſe to that I often glance at, ſometimes expreſs, never but mean, that *Religion tendeth much to peace, Civil peace*, and *in this World*, nor can that is *truly Chriſtian*, (being alſo truly taught and underſtood) *ever tempt or permit to ſeditious diſturbance in Any Civil State.* Howſoever, Till Change be Made, What is Preſent is the rule, and ſhould be the defence of any that adhere or ſtick cloſe to their known allowed guide, Importing nothing but *innocence and juſtification till it be altered*; Further conformity will come early enough when the Law is fixed, Till then there is no ἀνομία and ſhould be no ἁμαρτία, for *Where is no Law there* can be *no Tranſgreſſion.*

Rom. 4. 13.

There may be whom other courſes like better: Learned and pious who ſtand to the Good Will of their people, (not like to be any great loſers neither if their own Canons take place, *The Labourer is* Sure *worthy of His reward, The Catechumene with his Catechiſt*, the Taught with his Teacher, ἐν πᾶσι *Communicating in all his Goods*, they being further but reaſonably allowed to interpret their choſen rule, as, Who but the Prieſt ſhould give the minde of His Oracle?) And theſe may think it Mercenary to make any bargaine (as 'twere before-hand) *for Certain Wages* for this outward Humane work in bringing in the Lords Harveſt, accounting it *Covetouſneſs, Improvidence, Diſtruſt of God*, or *Undervaluing the Work* to condition or expect any thing ſtated before-hand, (as of the Tenth,) *They will rely on what is*

Matth. 10. 10. Luk. 10. 7. Gal. 6. 6.

after

after Given. May they do ſo, and alſo have ſo; yet ſo as they reaſonably allow Others to keep *Their Own ſeveral Way*; elſe they tyrannically impoſe who would leave moſt at liberty; *Petimuſque damuſque* or if not both Mutually No reaſon either ſhould inforce or be at Liberty. *Peters* faith we know was ſtrong enough *to walk to Jeſus upon the Waters*; and when he but ſaw *Him* on the other ſide, he forſook all preſently, and *girding his fiſhers Coat unto him caſt himſelf into the Sea,* and ſo came ſafe to him in a way moſt others feared, or might have been drowned by; And Yet *John* and *the other Diſciples ſtaid for a little ſhip.* Their zeal awaited a Convoy, and by ſuch Helps alone as others uſed They would come to their Maſter a land; Whither alſo *Thus* with ſafety *they Did come,* and were with equal welcome admitted to be where *Peter* was: Perpetually Aſſuring that though the boldneſs of the faith of ſome dare venture on miraculous wonderfull ways (wherein others may have miſcarried, or are like to do) venturing to tread on the Waves which *many* tremble at, making *Their paſſage in the Sea,* and *their foot-path* even on *the waters* as the Pſalm ſpeaketh, *Yet their fellows* may with approbation of acceptance, and aſſurance of that approbation enough, *expect and require the conduct and help of due and accuſtomed uſual ordinary means* to come unto *Chriſt*; and (though they fear to venture on the waves, truſt the ſlipperineſs of meer voluntary ſtayes which have deceived and ſunk many low enough,) Theſe as Thoſe with ſafety, ſpeed, ſucceſs, and ſure, and ſoon enough come Alſo to their Saviour. He that will not be Certain has no reaſon to blame Him that Would, any more then He *that is ſtrong ought* but *to bear the infirmities of the weak,* for the common edifying or ſupport of both, *Not pleaſing himſelf* alone. If That may do Well, This Better, and is Likelier, if not yet Surer, and Full as Lawfull.

John 21.7,8.

Rom. 14.1.

And yet for Theſe neither have I done more then I undertook, or attempted any thing for their *Jure divino,* which as it was without my bounds, ſo would I not incur the blame of Tranſgreſſion by medling with either way. Sometimes I muſt have touched upon it, for it was upon the very borders, ſcitu-

ate in the Confines of mine own walk, yet have I done it with that Wariness as not to intromix. Which it might be also needfull to note with so often repeated Declaration, least any should interpret doubtfull insinuations to a perverse sense, or that I do, what I often say I do not, disclaim or oppose it. By no means, & under this very solemn protestation, submonition, and concluding Asseveration; The most likely that way being in a fair and rational construction otherwise I think interpretable; and what has most Colour retaining yet *à Salvo*, being warily read, to redeem it to constancy and from holding contradiction to firm purpose and All the rest. Nay so far were things minded and condescended to *This way*, and *in favour*, that upon His motion, who perused, approved, liked well, and after many other encouragements Honoured All with acceptance of a Dedication, Somewhat of Divine Right Should have been added and annexed (by another Pen) and in me it lay not that it was hindered, and came not forth. None of that which is, 'tis hoped, can be offensive to any to whom Justice, Truth, and Law create not a scandall; While our Records and Those Laws are preserved; to what other end could I think them kept and declared for, but that they might, when occasion is, be produced and alledged? Nor can I prejudge any, bearing the Name of a Christian, of so vicious a tenderness, as that the evidence they give to Truth and Righteousness any where, or here, can offer him any the least occasion of displeasure or dislike.

In the end of Chap. 29.

For those are interessed (deeply) for the profit, especially the Reverend and Learned, my Fathers and Brethren of most Sacred and *Divine* Profession, of Them I have onely to crave, (I must and ought) *Exceeding* Pardon, *(Vos qui statis in domo Jehovæ, in atriis domus Dei nostri)* that I have so weakly, lamely, and in many regards insufficiently performed, by bold attempt of single solitary industry, what might have well required the best of Their Conjoyned furtherance, *Humbly acknowledging* that a Work of this Difficulty in it self, and high Concernment unto Truth and Them, might fittingly have awaited the Conjunction of many heads, and been more happy by falling into the hands of many co-operating Advancers,

Psal. 135 2.

who

who might have both made out performance ſomwhat anſwerable to deſert, and added alſo the Countenance of Authority, which the privacy of my Condition or unequal abilities Could neither expect or promiſe my ſelf or Others: *But then withall when I conſidered and They ſhall pleaſe to reflect on*, The darkneſs and untroddenneſs of the way, wherein I have been forced to go, moſtly Alone, and (looking downward) *in Their onely Service*, The number and diſtance of the flowers from which this honey, as little of it as it is, muſt needs have been gathered, *(Without any help,)* The Labour of the Work, The difficulty of the whole, And ſo little encouragement for any part, that (in ſuch ſtormy Times, when mens greedy affections are alſo checked, their luſts croſſed, & their tender corruptions touched to danger of offence) Impunity is towards the higheſt of Hopes, *They will Then*, 'tis hoped, if not for any deſert abroad, at leaſt from the Innate Candour and Ingenuity of which the World acknowledges ſuch ſtore within their own boſomes, *Vouchſafe this humbly craved and much deſired and needed Pardon*, or perhaps yet a little farther and *more* favourably accept this pledge of Love and Evidence of Good will, none can but ſee was meant (in way to the glory of God and eſtabliſhing his Book) to end (as to here below) *Cheifly* (for his Own is inconſiderable) *in Their Profit, Advantage, and Benefit:* It is left to their better skill, and united endeavours if they may be had, to ſmooth up by degrees unto the higheſt Requiſite of all neceſſary perfection what I have, I hope, not altogether unluckily begun (for this is but the drawing of my Ruder Coal,) and to add the Exactneſs of Art, Proportion of Lineaments, Symmetry of parts, Life of Colours, and all other Imbelliſhments of Ornament, Circumſtance, or Subſtance, (very needfull in ſo very needfull a Work) to the degree of How, What, and As they Pleaſe,

In the great variety that is in the World, and ſome Oppoſition of Judgements, it remaineth hard if not impoſſible to pleaſe All, While One deſireth This, Another That, One is for Antiquity, Another for Novelty, Such Laws pleaſe Some, The Contrary Others, and Some like None at all, Stubbornneſs making it out to a Prodigality of life often in Defence of bare

bare Opinion: In which Caſe what ſhould now the Speaker Do or ſay? What, but even ſit down in the Conſcience of his Integrity? Acquieſce in that he meant to offer His Sacrifice of Service to None but God and Truth; and if a few Sober and Grave either Approve or Pardon, to Account This (or but even the Laſt) a full accompliſhment of Deſire; Taking aſſurance it is very unlikely to meet with any thing but Contradiction from *Thoſe Many*, who Agree chiefly to Contradict and croſs each other: When All Men are of a Minde, then may it be hoped One Thing will pleaſe All; But This not like, till the ſame Gale of Winde fits ſeverall mens Voyages, who have their diſtinct and oppoſite ways to All points of the Compaſs.

Now ſit down and Conſider, Judge, Differ, and Be Charitable, O Chriſtian! Remember much That thy Great Name of a CHRISTIAN, implying nothing More then *To Be*, to Be nothing more then *Good and Vertuous*, to be Good and Vertuous ſcarce in Any thing So Much as thoſe neceſſary
Epheſ.4.2,3. accompliſhments of a Chriſtian, in *Meekneſs*, *Mercy*, *Tender-heartedneſs*, *Grace*, *Peace*, and *Love*; *endeavouring to keep the Unity of the Spirit in* that *Bond of Peace*, as the Apoſtle counſels, μετὰ πάσης ταπεινοφροσύνης, καὶ πραότητος, μετὰ μακροθυμίας, &c. with all Humbleneſs, Lowlineſs, Gentleneſs, and Long-ſuffering, Bearing and Forbearing; As knowing that
Col.3.12,13. *Rage is Brutiſh*, *Cruelty Inhumane*, *Fierceneſs Heatheniſh*, and Thou art thy Thy Self Nothing more then in Read-
Phil.4.7. dineſs *to Give and Forgive*, *Him* that offends, even *Purpoſely*, till *Seven* times, and *Seventy times Seven*. So *Put* on Therefore (as *the Elect of God*, *Holy and beloved* of Him) *Bowels of Mercies*, *Kindneſs*, *Humbleneſs of Minde*, *Meekneſs*, *Long-ſuffering*, *Forbearing*, and *Forgiving*; even as God for *Chriſt* his ſake forgave both Us; And then *the Peace of God*, ἡ ὑπερέχουσα πάντα νοῦν, that *paſſeth all Thought* ſhall no doubt dwell in thy Heart by *Jeſus Chriſt* our Lord. Amen.

20 *FINIS.*

Imprimatur, *Febr.*4. 1649.
JOHN DOVVNAM.